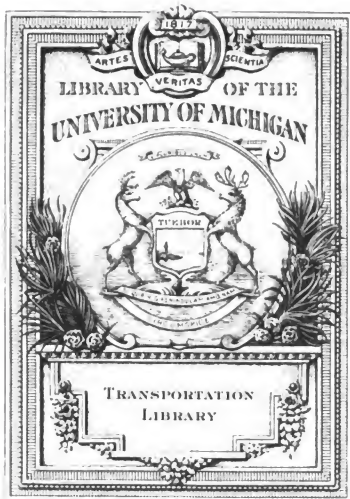


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THE PROCEEDINGS

IN RELATION TO THE

NEW SOUTH FERRY,

BETWEEN THE CITIES OF

NEW YORK & BROOKLYN,

FROM

Dec. 1825, to Jan. 1835.



NEW YORK:

1835.



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STATEMENT, &c.

THE Committee appointed at a meeting of sundry inhabitants of the city of Brooklyn, held at the Apprentices' Library, in the month of December, 1833, for the purpose of devising measures for procuring further ferry accommodations on the East river, deem it their duty to lay before the public a statement of their proceedings, and respectfully to suggest the course which in their opinion ought to be pursued hereafter.

The Committee, soon after their appointment, commenced making preparations for applying to the legislature for relief; but propositions were made to the Fulton Ferry Company for a compromise of their claim to exclusive privileges, which was effected, and a relief obtained from them of their claim under their covenant with the Corporation of New York. The delay was such as to prevent the Committee from going before the Legislature at their last session, and they concluded, as they had, by this arrangement with the Fulton Ferry Company, removed what had been *professedly* the *only* objection to their granting it, to make one further effort to obtain relief from the Common Council of New York. A petition for the establishment of a new South Ferry was presented to the Board of Assistants, which was, as usual, referred to a committee, and that committee, after examining the whole matter, and viewing the premises, reported that an additional ferry to the south of the Fulton Ferry, across the East river, was called for by public convenience. After various delays, the Board of Assistants were induced to bring up the subject, which underwent full discussion. Every thing which ingenuity and industry could suggest was urged against the new ferry by the President of the Board. A representation from one of the upper wards, and a resolution against the application, was carried in committee of the whole, by a vote of nine to five.

The Committee deem all further applications to the Common Council of New York for relief in the premises, useless and that the inhabitants of Brooklyn and Long Island must hereafter look to the government of the State to adopt some measures to enable them hereafter to obtain such an extension of accommodations for crossing the East river as will be from time to time required.

The necessity of establishing an additional ferry for a number of years past, has been so obvious as to satisfy every impartial person at all acquainted with the subject. Repeated applications for it have been made to the Common Council of New York, and on every application their Committees have reported in favor of it.

No additional ferry between New York and Brooklyn has been established since 1817. The population of Brooklyn has increased since that time, from six to twenty-three thousand. The population of the island also has greatly increased. The growing demands of the New York market within that period, has increased the passage on the East river, by the farmers, gardeners, and dairy men of Long Island, at least four fold. The city of Brooklyn has become thickly settled about a mile to the south and south-east of the Fulton Ferry. The Jamaica Railroad is located so as to land its passengers and freight at Patchen's wharf. The Gowanus bridge is nearly completed, to accommodate the southern population of the island, who will require the aid of a South Ferry.

Why then, it will be asked, is not this new ferry established? When the Kings of England, through their Governors of this Colony, in their charters, empowering the Corporation of New York to license these ferries; and when the Legislature of this State, since the revolution, ratified the power, it was not dreamt that the Common Council would ever, under any sinister influence, endeavor to obstruct the access to the city, and pursue in that respect a course so totally at variance with the practice of every other city in the world.

But a singular state of things has taken place. Brooklyn lots offered commodious residences for men of business in New York. They have come in competition with the grounds in the upper wards of New York; a competition which, if fair play is given, will be beneficial to the public. The general interest, the great commercial interest, will be promoted by extending the conve-

coniences of habitation on every side. But the jealousy of the land-holders in the upper wards of New York is excited, and their active influence, predominating in the Councils of that city, the general good is sacrificed to it. The same sectional influence would have removed the Custom-house from the scene of commercial operations, had it not been arrested by the energy and independence of the President of the Union. It would be as wise to attempt to force population exclusively on the eastern side of Broadway, as to attempt to force it exclusively on that island, instead of allowing it to extend in every direction.

The case concerns the State at large. This great commercial emporium, of which Brooklyn is now a small part, and destined to become a more important part, is the pride and boast of this State, and the legislature will be disposed to counteract local influences conflicting with the general welfare.

The Committee have heard of but two objections to accommodating the public with the requisite ferry privileges for crossing the East river.

1st. The covenants contained in the lease to the Fulton Ferry Company, which was disposed of as above stated. But the character of the objection has so important a bearing upon the proceedings of the Corporation of New York, that it deserves some consideration.

The East river, if a river it can be called, is a great natural highway. The object of establishing ferries upon it, is not to give monopolies, but to facilitate the use of this highway by the public. To effect this object these ferries should be protected, which is done by not suffering others to be set up so near as to be substantially identified with them. But the public interest must also be protected, which is done by establishing additional ferries at convenient distances, from time to time, as the convenience of the public may require. The King of England was bound thus to consult and accommodate the public wants.

He could not grant, and did not pretend, in his charters given through his Governors to the Common Council of New York, to give them any greater power than he himself possessed. Lord Hale, in his celebrated treatise upon the law of the sea, lays down the position broadly and unequivocally, that a King of England

can make no grant which shall obstruct or impair in any respect the public right of way over a navigable river or arm of the sea. The Common Council held and still hold this public power of licensing ferries, subject to all its obligations; and they ought constantly to bear in mind, that their duty is to facilitate, through the means of these ferry establishments, the use of this arm of the sea, as a great public highway. Yet, strange to say, this Corporation in licensing the Fulton Ferry, undertook to bind themselves by covenant not to establish any additional ferry from the New York side South of Catharize slip to the village of Brooklyn, for the period of twenty-five years.

As *such* their covenant was bad enough; but the Corporation of New York, seizing hold of the vague and dubious language of their covenant, and with a view to foster this monopoly of their own creation, construed it as extending to any southern point in the town of Brooklyn, and made it the pretext for refusing any further ferry accommodations on the East river, South of the Fulton Ferry, and at points to the South of the village of Brooklyn, as it existed in 1814, the date of their covenant. The entering into any such covenant at all, was unquestionably an abuse of their powers.

When the Committee caused a renewed application to be made to them for the establishment of a South Ferry, this difficulty about the covenant was removed as above stated. But another difficulty was raised; the Corporation of New York could allow no further ferry accommodations to Brooklyn until the tax law should be altered, so as to tax the inhabitants of Brooklyn doing business in that city upon their personal capital in the city of New York. To this there are two objections. In the first place it has no proper connection with the subject of ferries. If the principle of taxation is wrong, the Legislature should alter it. If the city of New York has any complaint upon that subject, she ought to make a separate and distinct application to the Legislature, who would hear the reasons for and against it. She ought not to force Brooklyn to concur in her views, by withholding rights to which Brooklyn, in common with Long Island, is fairly entitled.

The alteration of an established system of finance, which in this particular is in accordance with the general practice of all states

and nations, and the substitution of new and untried schemes, ought not to be made without full and distinct consideration.

In the next place, the rule of taxation ought not to be altered in the way proposed.

The general principle is that personal property follows the person, and is taxed where the owner resides. Real estate is taxed where it is situated.

The new plan proposed would be extremely inconvenient. Personal capital is constantly floating, changing its place and character. A man of business, one month may withdraw his capital from business and invest it in bond and mortgage or other securities; the next month he may find it convenient to extend his business and enlarge his capital. One day it is in one shape, another day in another. Now it is in a New York counting house; to-morrow in a new form it may be prepared to float upon the ocean, or be converted into the shape of credit. The only convenient rule is the present one in force, whereby a man is taxed where he resides, for the nett amount of his personal property, after deducting what he owes, without regarding its character or location.

This new-fangled scheme of taxation would also be grossly unjust.

Brooklyn, as a new and growing city, with all the conveniences of city accommodations yet to be supplied, will require hereafter as much taxation as New York. She will require in a short time much more, for New York has large tracts of land which are coming into the market as city lots, and will greatly relieve her burdens.

The class of citizens who reside in Brooklyn and do business in New York, are principally active merchants, mechanics, or professional men. Men of large overgrown capital, with very few exceptions, will not leave the city of New York; where there is great wealth there is generally a corresponding disposition for enjoyment. The families of such men will continue in a city which will supply them with the gaiety and amusement it affords. The class of citizens above alluded to, have their shops, counting houses, and offices in the city of New York; upon these they pay the tax in the city of New York, *directly* when they own them, *indirectly* in the shape of rent when they lease *them*. The taxes thus paid are nearly equal to all the other taxes paid by them. Any one may be

satisfied of this by comparing the amount of taxes on real estate in the three lower wards of the city of New York, with the amount in the other wards. The whole amount of the assessed value of real estate in the city of New York in 1833, was rising one hundred and fourteen millions, while the amount of the assessed value of the personal estate was about fifty-two millions. The assessed value of all the stores, shops, counting houses, and offices in the city of New York, is more than one half of all the real estate.

The class of citizens in question ought to pay the *greater part of their taxes* in Brooklyn, because the expenditures of the city government of Brooklyn in protecting their families and dwellings, are *much greater* than the expenditures of their neighbor city in protecting their counting houses, shops, and offices, with their contents.

All the vast expenditures incident to the protection of the persons who inhabit a city, must come out of the taxes upon property where there is no capitation tax. The expenditures of New York in relation to the public schools, alms houses, pauperism, bridewells, penitentiaries, boards of health, houses of refuge, water pipes, markets, &c. &c., do not benefit the class of citizens in question. In all these particulars they look to Brooklyn. Give to New York all the taxes upon their personal capital, in addition to those she already receives, and they must either be taxed anew in Brooklyn, or Brooklyn must tax doubly the rest of her inhabitants.

New York can well afford to encourage the introduction and employment of capital belonging to persons who are not taxed for it there, whether they reside in Liverpool, Brooklyn, Philadelphia, or elsewhere. *Such* capital not only raises the value of her real estate generally, but multiplies the most valuable parts of her real estate, and thereby adds to her taxes. It increases the rents and wharfage of her public wharves. It gives employment to thousands of persons in variety of shapes, and makes them pay taxes.

But without these benefits indirectly flowing from the introduction of the capital of non-residents, New York is amply indemnified for all her municipal expenditures, by the rents she receives on the stores.

A gentleman well versed in such questions, takes twenty-five stores, and considering all the expenditures incidental to them, he makes the following calculations :

"These twenty-five stores have one lamp for each eight stores, equal to\$ 50.00

These twenty-five stores have less than one-sixth of a constant watchman, the whole pay of whom is seven hundred and thirty dollars annually, equal to 125.00

The annual repairs of the streets of the twenty-five stores does not exceed..... 50.00

The cleaning of sewers and sweeping of street..... 25.00

Protection against fire, their proportion, 50.00

Add to this, part of three thousand six hundred dollars police expenses, officers being sometimes sent by the office, though they are generally paid by the employer, say 25.00

In all,\$325.00

The above allowance of three hundred and twenty-five dollars is large and liberal, and includes, it is believed, all the expenses that these stores put the city to. Now these stores are valued, by reason of being so occupied at high rates, and at a low calculation, each pays sixty dollars a year tax : together, the corporation receive fifteen hundred dollars."

The Committee need not add, that on the shops and offices of professional men and mechanics, the Corporation of New York have little or no movable property to protect ; their heads and hands furnish their personal capital.

If the Legislature were to alter the principle of taxation, it should be general. The rule must work both ways. If the personal capital of non-residents employed in the city of New York should be taxed *there*, the personal capital of residents in the city of New York employed elsewhere, should be taxed *elsewhere*, and not in that city. It will be well for her public advisers to look at the millions of capital belonging to her resident citizens, now lying out of the city of New York, and vested in manufactories in all the various objects of internal improvements, and in country bonds and mortgages. It is a poor rule that will not work both ways ; if they will attend to its operations on both sides, and calculate the *loss*

as well as the *gain*, they will refrain from recommending these visionary schemes of finance to the consideration of the Legislature.

The Common Council of New York think themselves completely intrenched in any position that they may choose to take against Brooklyn, under the idea that this power of licensing ferries given to them in their charters, is a *right of private property*, secured by contract, and guarded by the federal constitution from all legislative interference whatever, may be the abuse of it by them.

They do not distinguish between *public power* as contradistinguished to *private property*.

The power of licensing ferries is public power delegated. The ferry, when leased out under their charter, is to a certain extent, like a canal or turnpike, private property, though established for the public good.

The power of licensing ferries is essentially the same, whether exercised by the government directly, or whether delegated to the Common Pleas of a county or the Common Council of a city. In the Dartmouth College case the distinction was clearly marked and adopted by the Supreme Court of the Union. Its application will admit of but little difficulty.

In every government portions of these public powers, essentially sovereign in their character, are delegated to inferior officers and public bodies, and they are constantly changed, modified, and resumed, as sound policy or expediency may dictate. Thus the Legislature may appoint certain officers or municipal bodies to license taverns, and may direct the fees to be paid to the Treasurer of the town or county, or to be applied to any other purpose. So they may vest the power of laying out streets or highways in a particular body. All such municipal powers may be changed or modified by the Legislature whenever they may think proper to do so.

The Common Council of New York appear to think that because their chartered powers are derived in the form of letters patent from the crown, they are beyond legislative control—an empire within an empire, like the pretensions of the feudal barons of the middle ages.

The powers of a King or Governor of a colony in the delegation of a partial exercise of sovereignty, were not more effica-

cious than those of our own Legislature since the revolution. The true question in reference to this matter is, not how these powers are created, whether by *letters patent* or *legislative acts*, but what is the character of the franchise? If a public power, then it is under legislative control.

In conformity with these views the Legislature have heretofore acted. While they have abstained from touching what may be considered the property of the Corporation, whether in lots or buildings, or the tolls of ferries, during the continuance of their establishment or operation, they have never hesitated to interfere and change, modify or supersede those powers and rights of a public character with which this Corporation has been vested. In this respect they have stood upon the same footing with all other public bodies and inferior officers, and must bow to the supremacy of the legislative power.

Their charters give them the same power to *regulate* as to license ferries. But the Legislature, for a century and upwards, have exercised a paramount right of legislation. This was submitted to by the Common Council with occasional complaints, and in a memorial they petitioned the Legislature to alter the rates of ferriage of the Fulton Ferry in 1814: thereby admitting the supremacy of the Legislature.

In their charters they have full powers to establish and regulate streets and highways; but the Legislature have interfered, and these streets are now laid out by commissioners appointed by the Supreme Court, under a law of the state.

The Legislature have changed the elective franchise in the city of New York. They have from time to time abolished offices and created new offices, in defiance of their royal parchments.

The power of establishing ferries from time to time, which, as above shown, is done with a view to facilitate the public in the enjoyment of a great natural highway, is surely as public in its character as any power belonging to this or any other municipal Corporation.

For the reasons above assigned, the Committee are satisfied that there are causes in operation, of a permanent character, which create a moral disqualification of the Common Council of New York, fairly and fully to exercise the power of licensing ferries

over the East river, between that city and Brooklyn. In their opinion legislative redress should be sought, and the Committee are confident it will not be applied for in vain.

C. K. LSEY, *Chairman.*

BOARD OF ASSISTANT ALDERMEN,

MONDAY EVENING, SEPT. 22, 1834

SPECIAL ORDER OF THE DAY—NEW SOUTH FERRY.

As every thing relating to this subject is of great importance, we have thought proper to give a full report of the discussion which took place on Monday evening, that the public may have an opportunity of seeing every step that has been taken. It will be recollected that every report that has ever been made for a series of years, has been in favor of the ferry; yet, strange to say, no decision has been had.—*Editor Daily Advertiser.*

Mr. PURDY moved that the report of the committee on the subject of the new South Ferry, together with the other papers relating thereto, be brought before the Board—the same having been made the special order of the day.

Mr. HOLDEN. I hope this subject may remain over to the next meeting. One of the members is absent; the subject is an important one, and I doubt not every member would like to be in his place. It is very seldom that every gentleman is not in his place.

Mr. PURDY. I can see no good reason under heaven why the matter should be postponed; we shall hardly ever have a fuller Board than now. I hope the matter will be decided this evening.

Mr. BRUEN. On this question, perhaps, it is unnecessary for me to say how I intended to vote; but when a matter of so much importance is presented to the consideration of the Board, it is, I think, only fair that the friends of the measure should be represented in all their strength. For myself, if a question should be brought before the Common Council in which I and my friends up town feel a deep interest, I should consider it a matter of courtesy as well as of justice, that, in the absence of any of the members, the question should be postponed. The Chairman of the Ferry Committee has not called up the report; it has been postponed several times on account of the absence of the Chairman of the Ferry Committee, and the opponents were unwilling, therefore, to press it. Under these circumstances, I feel reluctant to bring the subject up for discussion or prompt decision on the present occasion. One member is absent who would undoubtedly vote for the South Ferry: I am, therefore, not willing to urge the matter on; and I would suggest that it would be more proper to defer it till the next regular meeting of the Board. As regards myself particularly, I am scarce able to be here; and I had to request one of the members to act as chairman. No evil can result to the

public service, nor to individuals, from a temporary postponement: at the same time, I am prepared to go on with the discussion, should gentlemen press it.

Mr. PURDY. It is true that the friends of the ferry ought to be present as well as those who oppose it. I know that my constituents are opposed to it; the question has already been several times put off; I have always been at my post, and I hope the matter will be decided, for I wish to be absent myself. It is said that the gentleman of the fourth is in favor of the ferry—I doubt it; if I understand right, he is opposed to it.

Mr. SMITH. I will presume to say that the gentleman of the fourth will vote in favor of the ferry. And I think that when so many members desire it, the discussion should, as a matter of courtesy, be postponed. I verily believe, from the feeling which is manifested, that this question will undoubtedly come up at the next meeting. I therefore wish that the gentleman from the tenth would fall into my views that it *should* be brought up at the next meeting; when I hope all the members will be at their posts.

Mr. WHITE opposed the postponement.

Mr. BALLAGH expressed his astonishment at the proposal for further postponement; the subject ought not to be postponed. He was opposed to the measure, and for that reason should insist on its coming on. He called for the ayes and noes on the question of postponement.

Mr. BRUEN resumed his seat as Chairman.

Mr. TALLMAGE. I am surprised to hear gentlemen declaring in this way that their minds are made up; if so, why take the votes at once? I would not assert my opinion till I hear what may be said on the other side. It is strange that men, when on the very point of entering upon a calm and deliberate discussion, should talk of their opinions being made up. What may be the opinion of the absent member I know not; I know not the opinions of three gentlemen of the Board; and I suspend my own until I have heard the arguments. I am perfectly willing to enter upon the question this evening; I am as willing now as I shall be at any other time. If the Board are inclined to postpone it, I am willing. The gentleman from the sixth cannot intimidate me by calling for the ayes and noes; I shall give my affirmation without hesitation.

Mr. JOHNSON. I feel desirous for a postponement; not, however, because my mind is made up. I dare not, as a legislator, acting under the solemnity of my oath, come into a legislative and deliberative body with my mind made up without that calm investigation with which the very organ-

ization of a deliberative body contemplates. It is supposed I am in favor of the ferry. I am in favor of such an opinion as the facts and reasoning which may be brought before us would require an intelligent being to pronounce. If the gentlemen who have pledged themselves against this measure, are prepared to vote without hearing what can be said in favor of it, I, at least, must say I must hear what is said in opposition. There is a report of the Ferry Committee favorable to the establishment of a ferry. Those who are opposed to it, I take it for granted, are prepared to give their reasons. For myself, if they ask me to negative that which public convenience seems to require; if they ask me to put a negative upon a proposition for the removal of a public nuisance; I expect them to give me good and substantial reasons for my vote. I, however, am open to conviction; and if they can show me reasons for giving a vote different from my present impressions, which are favorable to the ferry; if, I say, they can give me reasons for not establishing the ferry, I pledge myself I will vote with them; and in return, if they shall not be able to answer the arguments which I can give in favor of it, I ask them to vote with me. If I shall even be driven to take a side, and I cannot answer the argument they bring against me, I will vote with them; and if they cannot answer my argument, I shall expect them to vote with me. But are we prepared to go into a silent vote upon this subject? Are we to pass it like a city inspector's report, by ayes and noes? I inform the gentleman of the sixth, who called for the ayes and noes, that they have no terror for me; but the hour is late, the subject is an important one, and if we commenced upon it now, we should not close to-night. If they have doubt on this point, I ask them whether they are prepared to show that public convenience does not require this ferry? Whether they are prepared to show that there is sufficient accommodations for passengers over the Fulton, Catharine, Jackson and Grand street ferries? Whether a due regard to the public convenience does not require this ferry? I would ask whether the interests of the city, as regards the markets, do not require further accommodations? If public convenience does require the measure, I then ask what are the powers of the Corporation in reference to ferries?

Mr. WHITE called to order; the question was on postponement.

Mr. HOLDEN. I do not know whether the absent member is in favor of or opposed to the ferry. I made the motion for postponement, because I thought he ought to be here.

The **CHAIRMAN**. The question is on the motion to postpone. This is a matter of great importance, and it is fair that all the members should be present. For myself, I consider that a discussion so serious should be postponed when any member is absent. I am open to conviction; probably my prejudices on the subject may be wrong. I am unwell; still, as an individual, I am willing to go into the discussion; but I think the gentlemen in the minority ought to have an opportunity of expressing their sentiments. It is unfair when any member is absent, that so important a question should be disposed of in a manner which precludes future action.

Mr. JOHNSON hoped the Board would postpone the debate till some future time.

Mr. WHITE. I hope a definite period will be fixed upon, when all the Wards will be represented, and that the Board will then certainly decide upon the question. I am not bred a lawyer, and cannot make a long speech: but I can tell the truth, and, I hope, strongly too.

Mr. DELAMATER. I hope the Board will appoint a special time and special meeting. I am open to conviction, and shall be glad to have the merits of the question fairly discussed.

Mr. PURDY. I called up the report, because I thought every gentleman was ready to vote; it has been called up several times, and I wish the subject to be decided upon. I doubt whether upon this whole island you can get twenty-five out of one hundred to vote for the measure; the section of the city which I represent, I know is decidedly opposed to it. But, as the point has been pressed, I withdraw my motion.

The ayes and noes were then taken on the motion for postponement.

Ayes:—Messrs. Boyd, Holden, Johnson, Smith, Lamb, Tallmadge, Delamater, Purdy, Dyckman, Stewart, Suydam, and Bruen.

Noes:—Messrs. Ballagh and White.

The subject was accordingly postponed to the next regular meeting of the Board, Monday, Oct. 6th, at 5 o'clock.

HENRY GODFREY WHEELER,

Reporter.

BOARD OF ASSISTANT ALDERMEN.

MONDAY EVENING, OCT. 6, 1834.

Present—ALL THE MEMBERS.*SPECIAL ORDER—NEW SOUTH FERRY.*

After the general business of the evening had been disposed of, Mr. SMITH called up the report of the Ferry Committee, made on the 14th of July last in favor of a new ferry south of the present Fulton Ferry. Mr. SUYDAM was by the President called to the Chair; the Report is signed by Assistant Aldermen ROBERT SMITH and J. J. BOYD; and the resolutions offered for the adoption of the Board, were in the following terms:—

Resolved, That a Ferry be established from Whitehall slip, to the foot of Atlantic street, in Brooklyn, to be called the South Ferry: and that such part of the said Whitehall slip and of the bulkhead fronting the same, as may be necessary for such ferry, be appropriated for that purpose, and designated by the Street Commissioner and Superintendent of Wharves.

Resolved, That the Comptroller advertise for proposals to take a lease of the said ferry, for ——— years, the lessees to furnish two good steam ferry boats, to be approved by the Ferry Committee of the Common Council, and to provide all necessary floats and fixtures, and to be subject to such provisions and conditions as are usual in the ferry leases granted by the Corporation; and that such lease be given to such person or persons as may offer the highest annual rent therefor, he or they giving bond under a penalty, and with sureties to be approved by the Comptroller, conditioned to indemnify the Corporation against all claims on the part of the lessees of the Fulton Ferry Company, under their lease, such bond to be approved, as to its form and contents, by the Council.

The report, and a number of accompanying documents having been read—

Mr. SMITH moved that the report and resolutions be adopted.

Mr. BRUEN. I hope that the Chairman of the Ferry Committee, or some other gentleman, will give some reason to satisfy the Board that this report ought to be adopted.

Mr. SMITH. I have nothing to say at present; the reasons of the Committee are given in the report.

MR. BRUEN. I would inquire whether we have information in any authoritative form, showing that the Fulton Ferry monopoly has, by any arrangement of these gentlemen, been evaded; whether we have a right to grant their request; or whether they have entered into negotiations on the subject. As the presiding officer of this Board, I have received no such information upon which the members of this Board, acting in their legislative capacities, can safely rely.

MR. BOYD. I would refer the gentleman to the report and resolutions just read. The latter of the two resolutions says expressly that the Corporation shall be indemnified by the persons to whom the ferry may be leased from all claims on the part of the Fulton Ferry Company. It is a question with me, whether the Fulton Ferry have a right or not to claim such indemnity.

MR. BRUEN. The Corporation, by the very act of granting the franchise of a ferry, assumes the proposition of power to grant something. It would ill become us to doubt our own authority; we have either granted a ferry or not. If we have granted the Fulton Ferry, and the gentlemen seeking the establishment of the new South Ferry call upon us to invade the privileges we have given, we should at least know from some authoritative quarter, that an agreement has been made not compromising the rights of this Corporation, nor calculated to involve it in the perplexities of a suit at law. I hope, therefore, before any proposition is sustained, that the rights of the Common Council will be freely, fully, and honestly recognized by the gentlemen who come here to solicit our co-operation. If, I say, we have granted rights to one set of men, and another set of men shall ask us to invade those rights, let them at least show us by what species of indemnity we shall be protected. I, therefore, call upon the gentleman, although I *have* read the report and resolutions, and the statements of intended indemnity, to furnish us with more explicit information. I wish to know what that indemnity is, before I enter into the length and breadth of a discussion upon a subject whereby the rights of this Corporation may be called in question.

MR. BOYD. Assuredly the gentleman from the fifteenth, does not rightly understand the subject. The resolution says that the Corporation shall be *indemnified*. If the gentleman does not understand the term, let him go to Webster's dictionary; *that* will fully explain to him what is implied by the word *indemnity*. I came not here to discuss the rights of the Fulton Ferry Company; I am not prepared to enter upon that topic. But that the Corporation has a right to establish this South Ferry, I never have had a doubt; whether the

Fulton Ferry Company can or can not interfere with these individuals is a separate question. I will state, however, for the information of the gentleman, though he is well aware of the fact, that the Fulton Ferry Company have already got an indemnity. The gentleman knows this as well as I do. But I put that matter out of the question; it certainly is not before us officially. We have an undoubted right to grant the ferry; if others are injured, what have they a right to do? The resolution before the Board proposes that they shall claim their remedy. I am not now discussing the expediency of the grant, but I believe the Corporation have a right to bestow it, and that the best mode of indemnity would be that set forth in the resolution.

Mr. TALLMADGE. If the gentleman of the fifteenth had read Alderman Wales' report in the former Board, he would have seen the express statement of the fact, that arrangements had been made with the Fulton Ferry Company by the gentlemen interested in the establishment of the new ferry. Certainly the gentlemen whose names are attached to that report would not have made such a statement, if the fact were not so.

Mr. BALLAGH. There is no doubt, I believe, that the arrangement spoken of is in existence; but I should like to know if any arrangement has been made between the Corporation and the Fulton Ferry. We are called upon to invade a sacred lease. What indemnity have we, the Corporation, got for violating that lease?

Mr. BRUEN. The gentleman from the first, has referred me to Webster's dictionary for the meaning of the word indemnity. He knows that, in Wall street, Webster's dictionary is considered but poor indemnity for serious responsibilities. He himself would not take it as good security in such a case. The gentleman says, he knows that I know we have a right to grant this ferry. I *do* know we have a right: and I stand ready to maintain it through thick and through thin, and so soon as the now existing monopolies of the Fulton and other ferries shall have expired, I trust I shall prove myself as liberal as any man. But I do not intend that the gentlemen of the South Ferry shall go to the Fulton Ferry Company and make secret arrangements; or that the former shall make a contract with us which shall violate the faith we have given to the latter. Therefore, I ask the gentlemen to give to the Common Council such authority respecting the arrangement made for the abandonment by the Fulton Ferry Company of their franchise, so far as this new ferry is concerned, as shall justify us in acting upon the report. We have no such documents laid before us as the

grounds of a legislative action. I am aware that gentlemen say we have no right to grant this ferry; but in coming to solicit for it they tacitly admit the right we formerly conceded to the Fulton Ferry Company. If we have not right, why do they come here? Why not as well go to any other tribunal? Under the Corporation act of 1830, we were induced to say that we had a right to regulate the ferries; and although the people of Brooklyn have lately taken possession of the public land on the other side of the river, of our own docks and wharves, pending this discussion, still do gentlemen come here and say, that *probably* we have a right to grant this ferry. We should at least know that we are not invading the franchises we have already bestowed; and until that fact is satisfactorily ascertained, I hope that the papers will be laid on the table.

Mr. TALLMADGE called for the reading of Alderman Wales' report—made the previous year—being document No. 110; wherein was set forth the fact that an agreement had been entered into for the indemnity of the Fulton Ferry Company in the event of the establishment of the new South Ferry.

The document was accordingly read.

Mr. BRUEN. I cannot see that this helps the case one jot, not one tittle. The agreement alluded to in that report was made in reference to another proposition. The question now comes up entirely new. Let the gentlemen present have legal paper from the Fulton Ferry Company, stating that they will not object to our granting a ferry where their ferry privileges extend; or something to that effect. Till this assurance comes before us in some authoritative shape, we cannot entertain the proposition for a moment. For if we should get involved in a lawsuit, what would be the measure of damages against us? If this Fulton Ferry Company is making the enormous sums of money represented, our treasury might be brought in debt to an amount of several hundred thousands of dollars.

Mr. TALLMADGE. I understand the gentleman as denying there was such a document as is spoken of in the report of the late Board; denying that the parties to the South Ferry had ever entered into a written stipulation with the Fulton Ferry Company. He denies it.

Mr. BRUEN. The gentleman has misunderstood me. I mean to say that, as to the question now before the Common Council, we have no evidence that the Fulton Ferry Company will consent. If the gentleman have any thing to convince us that such an agreement does now exist, I shall be glad to receive it.

Mr. TALLMADGE. I have no other papers than those which appeared before the Committee. I thought that the fact stated by them would have been sufficient. They state distinctly that an arrangement had been entered into between the two companies.—What more? why, it is expressly provided in the resolution before us, that the lessees of the new ferry are to indemnify the Corporation. This was a prudential step taken by the Committee, in order to secure the Corporation from the possibility of loss. What damages then can exist? Where permission is given, and the terms of that permission are recited in the resolution, no damage could exist on the face of the earth. This fact relieves the Common Council from any possible liability. I do not speak now in reference to the main question of this ferry: perhaps I shall oppose it. I merely mention the circumstance preliminarily, and with the view to show that the Committee have reported understandingly.

Mr. BRUEN. To show the gentleman that he is inaccurate, if he will refer to the report of the former committee, [Document No. 110,] he will find that the Committee have heard from Alpheus Sherman and Clarence D. Sacket that they have made an arrangement with the Fulton Ferry Company, by which the Corporation of New York shall be indemnified from any claims accruing by the establishment of a new South Ferry. Now, I ask the gentleman of the first ward whether he finds in Webster's dictionary, or any other dictionary on earth, that the simple statement of these two men is sufficient to redeem the Common Council? Or whether information so loose is to constitute a sufficient ground of legislation? I think not: I have no notion of making the mere *ipse dixit* of any man the foundation of legislation. I think it becomes these gentlemen to bring forward a paper, something like a bond of indemnity, some such document as a private individual would give upon a matter of serious responsibility like the present. I do not care to legislate on such authority as the report of a Ferry Committee of our predecessors, when they assert no other fact than that they have been told by two persons that an arrangement had been made. I refer the gentleman to the document No. 110.

Mr. HOLDEN. I do not read the document so. The committee report the fact distinctly; they do not say they did it on the word of these two men.

Mr. BRUEN. Let the gentleman read the report. I say that the legal papers ought to be referred to the law officers of this Board, and that such papers ought to be in the custody of the Common Council, before we can legislate. How do we know that the agreement has not been annihilated?

The report in which it is referred to bears date the 3d of March last. We have no such paper before us now.

Mr. JOHNSON. It seems to me that the gentleman is putting himself on special pleading, and furnishing us with a practical evidence of the simplicity of the law of their being founded, as is often said, in the best common sense, and of the readiness with which the man of understanding will adopt the niceties of their practice, even though he be not a professional lawyer. I should infer from the course adopted by the gentleman this evening, that he is not disposed to meet the question before the Board, but rather to throw it off upon some question not involving the merits. This subject has been before the Common Council for the last nine years; and I am told that gentlemen opposed to the ferry have never yet met the question openly; that their arguments have never been declared, but that the question had been put down by silent votes. So far as I am concerned, I am indifferent to this subject. The gentleman from the fifteenth is bound, however, to respect the report of the Committee of the last Board; he surely does not intend to impeach the *finding* of that Committee, acting under their oaths. The Ferry Committee of the last year *find the fact* that an agreement had been entered into: it is here set forth in the documents of this body; which fact, I think, is sufficient to justify the Common Council in legislating on the subject, and certainly to justify this Board in now proceeding to the discussion of the main question. But if the finding of the Committee is impeached, I should like to know on what grounds. The Committee of the former Board found the fact of the agreement, and so reported. The Committee of this Board has not, and I perceive that there was reason for it, although the two reports are founded on the same petition. The petitioners, Alpheus Sherman and Clarence D. Sackett, offer to take a lease of this new ferry on certain terms, and the agreement in question was made with reference to their having the ferry; the previous Committee reported favorably to granting the ferry to them: but the Committee of the present Board report that the ferry ought to be leased at auction, or to the highest bidder, under covered proposals. Possibly, therefore, the agreement would not be binding. But, then, the Committee take care that the Corporation be indemnified against evil, by recommending a resolution that the lessees of the South Ferry, whoever they may be, shall enter into covenants to secure the Corporation against all claims on the part of the Fulton Ferry Company. If these covenants are not entered into, the Corporation will not be exposed to damage, for the ferry will not be granted; if

they are entered into, then the Corporation will be effectually protected. Now, the only objection to our entering into the merits of this subject, so far as appears to me from the remarks of the gentleman of the fifteenth, is, that we should not spend our time in discussion until the arrangement for indemnity has been made:—who is to make it? We do not read upon this report who will be the lessees of the ferry; and judging of the present and future by the past, it would be much more prudent for the applicants to wait, and just for us first to say, we will grant the ferry on condition of indemnity, and thus enable those who are to have it to negotiate with certainty, than for them first to negotiate under the uncertainty, as to the decision we may come to. I think we ought to proceed to the main question.

Mr. BRUN. I take the gentleman upon his own proposition. It is very easy for the Fulton Ferry Company to signify to us that they consent to the grant of a South Ferry. If any gentleman here present is authorised to state that that Company will so consent, then we can go to the main question at once. As to an auction, I would never, under any circumstances, dispose of the ferry in any such way. I hope to live to see the day when all these ferry monopolies will be terminated, and this, of course, among the rest. It is the easiest thing in the world for some authorised person from the Fulton Company to come here and say they are willing, so far as they are concerned, to grant this ferry to A, B, and C, let it be Alpheus Sherman, and Clarence D. Sackett, if you please; but at present I see only one side of the question, namely, Alpheus Sherman, and Clarence D. Sackett, saying they intend to indemnify the Company. I have no intention to impeach the authority of the former report, but the report and the arrangement were made in reference to a certain agreement then about to be entered into; and these gentlemen were bound to have presented the question to us divested of this difficulty. They have presented their claims in a new shape, in regard to the proposition now before us, as no step towards indemnity has been taken; and the gentleman from the third ward, [Mr. Johnson] himself admits that the original agreement might not be binding. If we put this ferry up at auction, I do not believe now that the gentlemen will be content to pay to the Fulton Ferry Company so large a sum as is stated, unless they get a bargain on their own terms. The gentleman himself must know, and recent events have shown us, that it is very easy to be mistaken in our calculation. He supposed that we owned the bulk-head in Brooklyn, but we have been lately told, that land made by alluvial deposit belongs, by virtue of what is termed the *jus accres-*

cendi, to the persons holding the adjacent land. Be it understood, however, that I have no wish to make any attempt at special pleading. I am quite disposed to enter into this subject on the merits, whenever the gentlemen from the third can convince me that this difficulty is disposed of. I succumb to his superior acquirements in special pleading; it is not my occupation. I move, therefore, that the papers be laid on the table until these preliminary documents are brought before us.

Mr. TALLMADGE. To obviate the difficulty, I move as an amendment, that the words "provided the Fulton Ferry Company assent thereto" be added to the end of the first resolution.

Mr. BRUEN. I should suppose that the gentlemen would get their purpose answered more readily by laying the papers on the table. I do not, however, intend to oppose the proposition, the question is with the gentlemen. I am as well prepared to enter on the subject now, as I shall be at any other time.

Mr. TALLMADGE. I understood this to be the main objection of the gentleman. The introduction of this clause will remove the possibility of difficulty, because, if we adopt the resolution as amended, the consent of the Fulton Ferry Company must be obtained. We had as well meet the question now as at any other time.

Mr. BRUEN. It appears to me rather idle for us to be legislating upon contingencies, as, if you do so and so, then we will grant you a ferry. Certainly the gentlemen are bound to divest this matter of every difficulty, before the Common Council should be called upon to legislate; till that time, our discussion will be useless, and our legislation superficial. I do not wish to present the Common Council in an undignified attitude. Let the South Ferry gentlemen make a proposition, simple, and divested of all conditions, and we will entertain it. Let them say to us, we ask you to invade the rights of this Company, but we have obtained from them a paper, a bond, under their hand and seal, that if a ferry is granted to us on the conditions agreed upon between us and the Common Council, you shall be indemnified. They are bound to give us such an indemnity from John G. Costar, and the other, proprietors of the Fulton Ferry. It would be perfectly idle for us, upon mere speculative grounds, to invade the rights which, in the exercise of our own powers, we ourselves have granted. It appears to me worse than absurd to legislate upon a proposition coming before us with no other names than those set forth in the printed documents. I do not impeach the respectability nor the property of these men, but they ought to furnish us with a sealed paper.

The agreement spoken of was made long ago; and by its terms, if we go on now, they may say, we agreed to pay you twenty thousand dollars a year for this franchise, but we thought you were liberal men, and that you did not intend to tax us while we were paying money to the Fulton Company, therefore, this agreement which has been in existence since March last, is not binding upon the gentlemen themselves, is not binding upon the Fulton Ferry Company, because it was based upon a contingency. I submit, therefore, whether the gentlemen are not bound to bring us some written paper from the Fulton Ferry Company, stating that they will not interfere with us for violating the rights we have granted to them. Would any man in a private capacity act without some authoritative paper, signed, sealed, and delivered? Let us have a written document; "what is writ is writ." I cannot accept the amendment to the resolution.

Mr. JOHNSON. I am authorised to state, for the information of the gentleman, that the agreement in existence is extremely general in its terms. It binds these parties to pay \$4,000 a year, or something like that, to the Fulton Ferry Company for the residue of their term of lease; and that whether the lease for the new ferry is obtained from the Corporation of this city, or the Legislature of the State, or any other power. And it is binding upon the parties, whether the parties to the agreement or other persons become the lessees. It is, therefore, an agreement between two parties for the protection of the city of New York, upon the strength of which they apply for this ferry; leaving the city entirely at large as to the exercise of its legislative power.—Have we not enough, in all common sense, to go into a debate upon this general question on the evidence before us? We have the report of the Committee as to the fact of indemnity; moreover, if the subject is discussed upon that report, it is upon the principle that the city shall be indemnified upon settled terms: and all of us agree that the city shall be indemnified, or that we will not grant the ferry. Does the gentleman from the fifteenth wish to give the subject the go-by upon a mere piece of bye-play? Does he wish to shove it off upon grounds purely? Does he by his special pleading, seek a decision of this matter on a question not touching its merits?

Secondary. This is not the gentleman's usual mode of proceeding; he is wont to meet his subjects full in the face, to stand boldly up to them. But this seeking to be hunting after delay or relief from the main question by raising to argument on this restrictive covenant, in the Fulton Ferry lease—that restrictive covenant, which has been the alleged

cause of preventing the establishment of the South Ferry hitherto. This objection, it would appear, is introduced to throw the matter off upon other than the true merits of the question; I still must say there is something like special pleading in all this. I ask the gentleman to meet the general question, shall the ferry be granted, or shall it not? it will be a great deal better to meet the question and decide it, and thus put the parties at rest. If they are not satisfied with our decision, and think they have remedies elsewhere, why, let them go and seek them. It seems to me we have quite enough to authorise us to proceed; the amendment proposed by the gentleman of the eighth, protects the city; the report itself protects the city; the agreement also protects the city.

Mr. HOLDEN. There is a great deal to be done in this matter hereafter. It appears to me, all that can be done to-night is to resolve that there shall be such a ferry, or that there shall not. Much is to be done afterwards. The lease is to be drawn in case we grant the ferry; and covenants must be entered into for the indemnification of this Corporation; but these points are to be settled hereafter. I am surprised to hear this preliminary objection from the gentleman of the fifteenth. If I rightly understood him when the matter was last brought up, he expressed himself very anxious about it, and I supposed the broad question would surely be settled to-night. We cannot adjust all the arrangements to-night, but we can do this one thing: we can say whether or not we will have the ferry; and if there is a majority in favor of it, then other matters can come in their proper places. Indeed, I am glad that this preliminary objection has been raised; I believe it is the only one that can be raised; at least I know that the only objection which I have been accustomed to here, has been, that the granting this ferry would be an invasion of the rights of the Fulton Company. But this is now disposed of, and I presume, therefore, there can be no difficulty in meeting the main question.

Mr. BRUEN. I hold myself bound to say, that I am perfectly content to go into the discussion to-night. The gentleman from the third has done me no more than justice, in saying I never shrink from any question before the Board. I was in favor of the adjournment of this subject the last time it was brought up, because I wished the absent member should have the opportunity of expressing his sentiments. I am ready now, if the gentlemen wish, to enter on the debate; at the same time, I think the matter had better be postponed, on account of the difficulty I have named.

The PRESIDENT pro tem [Mr. Suydam] put to the vote the amendment, offered by Mr. Tallmadge, to the first resolution. It was lost 9 to 5.

The CHAIRMAN. The question will now be on laying the whole subject on the table.

Mr. TALLMADGE. I understood that the gentleman from the fifteenth had withdrawn his motion to lay on the table.

Mr. BRUEN. Not so, sir. Let the friends of the measure rise and say they are desirous that the matter should be decided now, and I am ready to withdraw my motion. There are reasons why it should be postponed.

The question was called for.

Mr. BRUEN. [In continuation.] I hope it will be thoroughly understood, that the opponents of the South Ferry do not intend to postpone the debate, unless with the full consent of the gentlemen who are in favor of it. If the latter desire the question decided affirmatively or negatively, to-night, we are ready. If they do not, I move the subject be adjourned over until Monday.

Mr. PURDY. It is now nine o'clock ;—I understand some of the gentlemen calculate to make long speeches ; I am ready to meet the subject, but I think we had better adjourn, and not take up the question at this time.

Mr. JOHNSON. If the gentlemen will be prepared to meet this subject on Monday next, I will consent to its adjournment.

Mr. BRUEN proposed that the subject should be postponed until the 3d Monday in November. He was informed that the gentlemen seeking this privilege, intended to apply to the Legislature for an act of incorporation, and there would be ample time for the necessary advertisements after that period ; and some of the difficulties that beset the question now, might perhaps be adjusted by that time, between the authorities of Brooklyn and this city. He meant especially in reference to the subject of taxation.

Mr. JOHNSON. The mere proposition of the gentleman to postpone until the third Monday of November, strikes me with a good deal of force. If the gentleman apprehends that the question will partake of a political or party character, or in any manner affect the election on either side, I should prefer that it be postponed until such a time as we can discuss it, without reference to party motives, or free of political influence.

Mr. BRUEN. I beg pardon from the gentleman, I made no such proposition.

Mr. JOHNSON. If it partakes of that character in the slightest degree, I say, lay it on the table :—I am not aware that it does. On the contrary, I supposed that the Common Council would meet this question as they have met every other question in legislation since I came into the Board, without

reference to party effects or partizan parties. I cannot see how this matter has any effect on one party or on the other, be it decided how it may. But if there is the least apprehension that it may partake of such a character, that the members of this Board cannot come here with an unbiassed mind to legislate upon the pure principle of what is due to their constituents and the country, then I say postpone it till such time as we may enter upon it free from any such apprehension.

Mr. BRUEN called for a division, on laying the papers on the table.

The vote was accordingly taken, and the motion was carried, 8 to 6.

And the Board then adjourned.

HENRY GODFREY WHEELER,

Reporter.

BOARD OF ASSISTANT ALDERMEN.

MONDAY EVENING, DECEMBER 1st, 1834.

NEW SOUTH FERRY.

Mr. SMITH called up the special order of the day, being the Report of the Ferry Committee in favor of a New South Ferry. The resolutions appended to the Report, are in the following terms:

Resolved, That a ferry be established from Whitehall slip to the foot of Atlantic street, in Brooklyn, to be called the South Ferry, and that such part of the said Whitehall slip and of the bulkhead fronting the same, as may be necessary for such ferry, be appropriated for that purpose, and designated by the Street Commissioner and Superintendent of Wharves.

Resolved, That the Comptroller advertise for proposals to take a lease of the said ferry, for — years, the lessees to furnish two good steam ferry boats, to be approved by the Ferry Committee of the Common Council, and to provide all necessary floats and fixtures, and to be subject to such provisions and conditions as are usual in the ferry leases granted by the Corporation; and that such lease be given to such person or persons as may offer the highest annual rent therefor, he or they giving a bond under a penalty, and with sureties, to be approved by the Comptroller, conditioned to indemnify the Corporation against all claims on the part

of the lessees of the Fulton Ferry Company, under their lease; such bond to be approved, as to its form and contents, by the Counsel.

[Mr. TALLMADGE presented a petition from the President and Directors of the Gowanus Bridge Company in favor of the South Ferry. It was laid on the table for the present, to be taken up with the other papers on the same subject.]

The Report having been read,

Mr. SMITH, [the Chairman of the Ferry Committee,] moved its adoption.

Mr. BRUEN. I should like to know who are the individuals petitioning for this ferry?

Mr. SMITH observed that it was not of much consequence who the petitioners were; the Report of the Committee was before the Board, and the only question to be settled was, whether the ferry should or should not be established.

Mr. BRUEN. I ask again, who are the petitioners? I should like to know.

The PRESIDENT. [Pro tem. Mr. Suydam.] The gentleman's interrogatory is answered in the Report.

Mr. BRUEN. I understand that the names of 600 persons are signed to a written document, as petitioners for this ferry, but that petition is not before us. I should like to know who the petitioners are; I have no specific information on that point, and it is said there is a contract between the applicants and the lessees of the Fulton Ferry; that paper is not now before us, though it was a matter of discussion when this subject was last brought up. It may be a paper *in esse*, or, it may be a paper *in posse*.

However, I have sufficient information to satisfy me that an agreement has been entered into between these parties and the Fulton Ferry Company. Still I am desirous to know who these parties are; whether they are residing in Brooklyn or New York; whether they are interested or not; whether the people of Brooklyn constitute a small or a large portion of the petitioners; whether the ferry is for the benefit of New York or Brooklyn; whether in this remote region, this [to me] *terora incognita*, part of which is in the process of being filled up, without habitations or streets, whether, I ask, there is any public necessity, having its origin in the peculiar position of these gentlemen, so powerful as to induce the members of this legislative body to grant them a privilege which the people towards the Navy Yard have been unable to obtain?

The CHAIRMAN. For the information of the gentleman, I would refer him to the printed petition of *Alpheus Sherman* and *Clarence D. Sacket*, praying for the establishment of the ferry.

[The Clerk then read the petition of inhabitants and dealers in the neighborhood of Whitehall, favorable to locating the ferry on the west side of Whitehall slip; also a memorial of sundry persons against locating the same at Old slip; also a petition of the Brooklyn and Jamaica Railroad in favor of the ferry.]

The CHAIRMAN. I would state that I saw a roll of paper which was handed from one of the Ferry Committee of the late Board to a member of this, with the names of several thousand petitioners for this ferry. That paper does not now appear to be present.

Mr. BRUEN. Is the paper forthcoming which was called for when the subject was last before the Board?

Mr. JOHNSON said that, lest the gentleman should not have the full benefit of his argument on his favorite point, that the inhabitants of Brooklyn were the persons clamorous for the ferry—he would read a resolution which he had received. It is officially certified to by the Clerk of the Common Council of Brooklyn. [The resolution set forth that rumors had reached the Board, that a number of persons in the city of Brooklyn were opposed to the ferry; and it was therefore resolved, that in the opinion of the Common Council of Brooklyn, such a ferry was wanting for the accommodation of the public, and that it was the general and almost unanimous wish of their constituents, that such a ferry should be made.]

Mr. BRUEN. Is that resolution offered as a communication from the Corporation of Brooklyn, in favor of the South Ferry?

Mr. JOHNSON. Yes.

Mr. BRUEN. Then I doubt whether it is competent for us to receive it. When the Common Council of Brooklyn shall come before us in a proper manner, as a public body, I trust they will be received as is meet. But I have no idea that a matter of this kind should come thus incidentally before us; it is not proper—it is not in parliamentary usage for the gentleman of the third ward to present a paper in this informal sort of way. I hope it will be withdrawn; I hope we shall do to them as they would do to us. When they shall present themselves in a becoming manner, and not, on the contrary, appear in an attitude of direct hostility, advertising in your public journals the notices of an application to the State Legislature for permission to establish this ferry, invading the franchises, the ancient usages, and the rights of this city, then the Corporation will attend to them. But is this a fit paper to be brought forward here as an argument of others, in favor of the South Ferry? I put it to the gentleman's own sense of propriety.

Mr. JOHNSON. The gentleman seems desirous to build up as an argument against this ferry, that the application came solely from interested individuals in Brooklyn: now it is the mass of the people of Brooklyn who are pressing for the ferry—not those of New York. Now, I thought I was doing the gentleman a favor in offering a document to show that the inhabitants of that city, almost to a man, are in favor of the ferry. I am surprised that a paper which I offered as matter of courtesy to him, should have been received with so much excitement. I have no wish to alarm the gentleman's feelings; though I see in this resolution a powerful argument in favor of the ferry. I put it to him at once, that the friends of this ferry consider the inhabitants of Long Island as much the constituents of the Members of this Board as the inhabitants of New York; that we are sitting in the exercise of a delegated legislative power for the public at large, and not merely for the people of the city of New York. The resolution was put into my hands as a resolution of the Common Council of Brooklyn. If the gentleman doubts its authenticity, he shall have all the benefits of his doubt.—If it is authentic, then let it go for what it is worth. The Common Council of Brooklyn think their constituents are in favor of the ferry, and this is the expression of their opinion: and as such we would regard it.

Mr. BRUEN. The gentleman is mistaken if he supposes I am at all alarmed at the communication: I am not so. Nor am I excited by ascertaining that the Corporation of Brooklyn offered such a resolution; but least of all do I doubt its authenticity. I know too well the reputation of the gentleman from the third ward to suppose him capable of offering any document that was not authentic; I believe that it is authentic. At the same time, I do not believe that a resolution from the Corporation of Brooklyn, stating that their constituents in that city are desirous of having this ferry, is sufficient for this Common Council to act upon. The Corporation of Brooklyn may decide upon any abstract proposition suited to their own convenience. We are called upon to act by men who petition for favors——

Mr. JOHNSON. For rights [Call to order by the President.]

Mr. BRUEN. [In continuation.] For favors; *for favors!* We are called upon by *petitioners*, who come to ask us to give them that which they think they have not got, and which we have the power to bestow. Now if these gentlemen, Clarence D. Sackett and Alpheus Sherman, [for after all, these are the only two names on the record; and Mr. Sherman mentioned to me the other day in conversation,

that he had no interest in the matter,] but if these two gentlemen, and six hundred others, whose names are mentioned as on a paper, come to us asking favors, I consider that, by that very act, they recognise the rights of this Common Council to grant or withhold them. If, at the same time, the Municipal Authorities of Brooklyn choose to invoke the aid of the Legislature against us, and to take away the rights which belong to us, in such case I would not for a moment entertain their petition, for it would be beneath the dignity of this city and of the Common Council to do so. But if they maintain their attitude of *petitioners* only, then their application is to be opposed, maintained, or defeated, by justice, right, reason, and argument. I have yet to hear by what justice, by what right, by what reason, or by what argument this proposition for a ferry can be defended. The gentleman from the third ward some time since promised, when this subject was under discussion, to bring forward such arguments, such reasons, and such facts, as would convince every man that the claims of these petitioners were so just, and reasonable, and right, that the Common Council could not possibly refuse them. I am here, sir, to hear those reasons. I invite the gentleman to bring forward his strong arguments, and to let us, who sit here as legislators for the city of New York, and not for Brooklyn, know why we should grant to the parties in question, rights which we ourselves are not permitted to enjoy. When the gentleman can convince me that I am wrong on this point, I will concede to him; till then, I propose to vote in the negative. I have much more to say on several other points; but I should first like to hear the gentleman's reasons why this privilege should be granted.

[On motion, the resolution from the Brooklyn Corporation was placed with the other documents, Mr. Bruen remarking that he hoped it would be entered on the minutes as a communication from the gentleman from the third ward.]

MR. TALLMADGE said he believed the agreement between Alpheus Sherman, Clarence D. Sackett, and the Fulton Ferry Company, was with the Board.

The CHAIRMAN said it was not on the table.

MR. BRUEN. I believe such a paper is in existence, not with the persons upon the printed documents, but with other persons. I do not know that Mr. Sherman or Mr. Sackett are parties to it. Here are also some other persons who have remonstrated against it. I am willing to believe that such an agreement is in existence, and that it obviates all difficulty in this matter, so far as the rights of the Fulton Ferry are concerned.

Mr. BOYD. The remonstrance of which the gentleman speaks, was against the location of the ferry, and not against the ferry itself.

Mr. BRUEN. I stand corrected.

Mr. JOHNSON. The resolution offered by the Ferry Committee, provides for the establishment of a ferry from Whitehall slip, in New York, to the foot of Atlantic street, in Brooklyn, &c. I would notice that this resolution involves two propositions; first, the establishment of a new ferry, and second, the place from which it should be established. In order to bring these two propositions separately before the Board, I shall offer the following resolutions, by way of amendment:

First, that a ferry be established from some part of the city of New York, south of Maiden lane, to some point on Long Island, south of Fulton street, in the city of Brooklyn.

2dly, that a new ferry be established from ——— slip, in the city of New York, to Patchen's Dock, at the foot of Atlantic street, in the city of Brooklyn.

Mr. JOHNSON. [Continued.] I do not remember that I ever made the very unlimited promise attributed to me by the gentleman of the fifteenth ward. It would have been a piece of presumption far beyond what I could myself approve of, to undertake to produce such powerful arguments as those which have been laid to my charge. I do recollect of saying something about my intention to debate this question, and also that there were reasons which to me were conclusive, to entitle the applicants to the establishment of this ferry, and which, to my mind, rendered it obligatory on the city of New York to grant it. And I believe I also said, that I considered certain arguments which had been raised against it, unsound. Now, sir, it strikes me, in the first instance, with great surprise, that this should have been made a question at all; that the grant of this ferry should not at once have been made; and that the mere suggestion of its expediency did not lead the gentlemen who, as is said, have the power of granting or withholding it, at once to pronounce their assent. But certain popular arguments, which looked very much like an attempt *ad captandum*, have been used, and I have reason to believe, have affected the minds of certain gentlemen. And I am also aware that this subject involves some questions that are rather beyond the province and examination of some of the gentlemen who are called to decide upon it. In consequence of this, I am free to confess that I have given the subject some examination; I am free to confess that, before this examination, I was adverse to making the grant. I entertained a question whether it was for the interest of this city, that the ferry

should be established ; I entertained a question whether it was for the interest of up-town property, and whether it would not be for the interests of this city, that the Corporation should hold on to their power, in order to compel certain arrangements in respect to taxation. The conclusion to which I have come is, that these two subjects are entirely unconnected ; that however right we may be in the determination to foster our own possessions, we must do so without injury to others ; and however desirous we may be, that the differences respecting taxation should be adjusted, still that we cannot be excused for blending that matter with this application. The power to settle the differences is not in our hands ; they must be elsewhere disposed of.

The power to grant a ferry is properly denominated a franchise ; and it is the exercise of this franchise upon which which we are to decide. The establishment of a ferry is called for, and certain persons come to ask the grant. Have we a right to refuse it ?—We have, under certain circumstances. Are we *obliged* to grant it ?—Yes, if the public convenience requires it. This, then, is the testing principle. We are bound to grant the ferry, if public convenience requires it ; if not, we may do as we please. And this, I say, is the principle which governs the exercise of such a delegated legislative power as that under which we are acting. The first question, then, will be on public convenience. How far does public convenience call for the establishment of an additional ferry between New York and Brooklyn ?

Now, Mr. President, to go into this subject seems to me to be arguing to prove a point admitted in public opinion. It would be merely to lay before you a collection of facts and statistics to prove that public convenience requires it. I cannot believe that there is any gentleman here present, who does not, in his conscience, know that public convenience requires the establishment of this ferry, or who does not know that the inhabitants of New York, Brooklyn, and Long Island generally, are daily incommoded by the want of it.

What number of ferries at present exist between N. York and Long Island ? There are the Fulton, Catharine, and Walnut street ferries, and another established to Williamsburg. We have three ferries between New York and Brooklyn proper ; to wit, the Fulton, Catharine, and Walnut street ferries. These are the only mediate communications between the two cities. Now, sir, when were these different ferries established ? The Fulton Ferry, originally established at the Fly Market, (now Maiden-lane) is the oldest ferry in New York ; so old, indeed, that it is mentioned in the charter of Queen Anne. The charter of the Fulton ferry

was granted in the year 1814; that of Catharine ferry, in 1808; and that of Walnut street ferry, in 1817. The year 1817; [seventeen years ago,] is the period at which the last addition was made to the communications between the two cities. Is not this fact alone sufficient to show that public convenience requires additional means of communication? In the lapse of seventeen years, has New York been stationary in population? Has Long Island been stagnant? Is Brooklyn what she then was? And is it to be said, in the face of improvements which have arisen, almost with the suddenness of exhalations, and in the face of a population which has increased beyond all measure, that the three ferries, which were sufficient seventeen years ago, do not require additions now? Since 1814, [and I believe 1817,] the population of New York has increased at least one hundred and fifty thousand; and Brooklyn at that period was a little spot, scarcely covered with a hundred houses. Two thousand would be a large number at which to fix its amount of population then. What is the population of Brooklyn now? The census for 1830 puts it at fifteen thousand. In the lapse of four years, the village has almost doubled its size. It has extended a mile, or a mile and a half in length: it has spread from Fulton to Atlantic street; and almost from Fulton Ferry to the Navy Yard. At all events it is certain that there is a population of twenty thousand settled now where fourteen years ago there was but a population of two thousand. And are the same number of ferries, which answered every purpose then, sufficient now? Are the inhabitants who have built up their houses a mile or two below the present ferries, to be obliged to walk that distance to get a communication with this city? Are we not bound to listen to their cries; yes, I say, their cries for relief? And is it to be retorted and thrown into their faces—"You come here seeking favors, which we can grant or refuse at pleasure?" If I am right in my position, that the power to grant this ferry is a franchise, we are bound to exercise it when called upon to do so by this great mass of population, by public convenience. Sir, I have upon my table, documents which show, to a certain extent, the immense crowd of passengers over the Fulton Ferry. Will gentlemen believe that there are daily passing over the Fulton Ferry from seven to eight thousand people? I speak of this one ferry only—from Fulton street to Brooklyn. I have before me a schedule of the passing there; and an affidavit in support of it, made by a person who stood and made the examination on two days—the 3d of October, and 13th of September, of this year. And these were not, I believe, days of races, or unusual

pressure. The following may be considered a fair sample:—

October 3d, 1834.—Pleasure wagons, 56; coaches, 31; gigs, 60; saddle horses, 40; milk carts, 51; loaded carts, 321; loaded wagons, 47; empty wagons, 30; stages, 25; empty carts, 140; sulkies, 19; hand-carts, 5; foot passengers, 8251.

September 13th, 1834.—Pleasure wagons, 64; coaches, 22; gigs, 43; saddle horses, 22; milk carts, 49; loaded carts, 313; loaded wagons, 52; empty wagons, 27; stages, 5; empty carts, 138; sulkies, 3; hand-carts, 7; foot passengers, 7988.

[The gentleman continued.] The facts on this subject have been furnished at my particular request. Now, sir, in respect to the passing over this ferry, the crowd is so great that it is scarcely safe for females to attempt to cross. It is well known, that a multitude of the inhabitants of Brooklyn are doing business in the city of New York? and this, I believe, is considered an argument against the ferry. According to this mode of reasoning persons are not to be permitted to live where they choose, but must live in New York, and buy their residences in the upper part of the city. Ladies shall not be accommodated in passing over this ferry to the places which their father and husbands have chosen for their homes, because they are to live where *others* choose, and where *others* may profit by their location. From morning to night, there is a constant pressure of carriages to the ferry. There is scarcely an hour, or a moment, during which there is not a crowd of waiting carriages, unable to get accommodated till their turns come round. Again, the want of ferry accommodation interferes seriously with your markets. The market wagons, milk carts, and all those who supply your families with the necessities and luxuries of life, are regularly delayed. In fact, the argument on the point of convenience is established by a thousand facts, which it seems to be needless, and almost trifling, to mention.

But there are other circumstances of a more general character, which it is the duty of the Common Council to consider. There is a railroad, recently established, from Jamaica, L. I. to New York. [The petition of the Company in favor of the ferry is on the table.] By the charter of that Company, it is not permitted them to enter within the ancient boundaries, or precincts of Brooklyn. Atlantic street is one of those ancient boundaries; and if this ferry is not established, whatever produce is brought upon it to the river, must be put into carts and transported to the Fulton Ferry. There are two Companies, [the Gowanus Bridge Company, and

Gowanus Turnpike Company,] which will be defeated in their object, if this ferry is not established. The inhabitants of Long Island have been investing their means, by building roads and bridges, and establishing communications, of all sorts, to increase the wealth, comforts, and luxuries of this city; and they are deprived of the means of doing so by this opposition of the Common Council of New York. Where was there ever yet a city that closed its gates to the introduction of produce from the country? Where, before, was the idea ever promulgated, that ferries, bridges, and roads, were not to be established; and that the utmost freedom of communication was not to be established between different cities, and between cities and the country? Look at the bridges, roads, and ferries of Philadelphia! Look at Boston! See the thousands upon thousands invested by her in carrying her roads and bridges over and through the marshes that surround her. Look at Baltimore! Look at foreign countries! Look at London, with her bridges, costing her millions of dollars. And as the bridges of London are not sufficient to satisfy the public spirit of her councils, she must dig into the very bowels of the earth, to make a tunnel under her *Thames*: and New York, in the might and majesty of her wisdom, refuses to establish even a ferry to Brooklyn!

In respect to the roads that I have mentioned, I say that the public convenience of the inhabitants of Long Island requires this ferry. The Gowanus road shortens the distance from Fort Hamilton to New York $3\frac{1}{2}$ miles; and the inhabitants of Long Island from that section, are to be compelled to travel seven additional miles, because of the question of taxation—and to settle the question, whether Brooklyn or the up-town land speculators in New York are to be enriched. The great question is that of public convenience.

The other road [Jamaica railroad] shortens the distance three quarters of a mile between this city and the Military Garden, just out of Brooklyn.

But it is not merely a question of convenience to persons travelling from a distance. There is involved a question of more liberal and expanded government; a question with regard to the increase of the convenience, the comfort, and the wealth of your city, which is to be considered. What is the great object of all national legislation?—The creation of national wealth by the protection of industry. After that, other things are to be taken care of. By what means, then, is national wealth increased?—By increasing the facilities to it, and enabling the people to husband their means. Now, the only point I expect to meet is this:—you encourage the rise of lands in Brooklyn at the expense of New York. The prin-

ciple I contend for is the increase of the comforts and benefits of our population. I go for a principle on which, I know, I shall meet the opposition of every landholder in the city; but I take upon my side all that mass of population who pay rents, and who live by the earnings of their hands and the exercise of their understandings. Increase the surface over which you spread your population, and you will reduce your rents. If you reduce your rents, the poor man will have a surplus at the end of the year, which, if population is crowded into a comparatively small space, must go to the benefit of the richer landlord. If we were looking to the benefit of the laboring classes of society, let us encourage industry, and throw open the country. Establish your ferries and your roads—build your tunnels and your bridges—make your communications as free and as numerous as possible, and bring them into the very heart of your city. If a man can get a rent in Brooklyn lower than in New York, and we can give it to him, it is our bounden duty, as well as our policy, to do so. Why is then this opposition to a new ferry—where is to be the centre of our business? Is Brooklyn to rival New York—will she ever be more than a suburb? If so, I ask where has a city been found whose centre of business has been changed when once established?—That centre has been established permanently in New York, and it is idle to attempt to change it. Business men will congregate together in New York; you cannot break them up:—ten thousand ramifications of interest bind them together in ties mere indissoluble than the Gordian knot. In the same proportion as we increase the conveniences of this city, we help the laboring class—you lower their rents. The poor man in Brooklyn *now* can get his green spot of earth, his cottage, fresh air, a cow, and a hundred other conveniences—can see his wife and children strong and healthy, for the same rent which he would pay here to smother in the filthy and noxious kennels of our city. It is our duty to use every means in our power, not only to encourage our laboring classes in the respect to which I have alluded, but to go to other means. Establish your communications freely, and you reduce your expenses of marketing. There, then, is another point of public convenience, of public necessity, which calls upon us for the exercise of our power. What is the difference between rents and marketing in New York and Philadelphia? Philadelphia has a population about as large as that of N. York; consumes as much; and, I believe, covers little more land. Her roads, her bridges, and her ferries, establish the freedom of communication with the country, and at such a low rate, that it encourages competition, and reduces marketing twen-

ty per cent at least below what it is in N. York, and rents are from thirty to thirty-three per cent lower there than here. I can assign no other reason for this, unless it be some superiority in the quality of the country surrounding her. But the fact is so. She carries on an immense business, has an immense population, and great wealth. Her population is luxurious, and her consumption great. Good legislation requires, therefore, that we should not only establish this ferry, but every other, and on every border, when it is asked for, and when the common law restriction affecting such cases does not deter us. We have before us this multitude of petitioners, and the resolution from the city of Brooklyn; and I now again call up to the recollection of gentlemen that resolution from the Corporation, calling for a ferry, or rather expressing the earnest desire of the inhabitants that it should be granted.

I have said it was our obligation and our duty to grant this ferry, and this will lead me to the examination of the charter, and also of the law respecting franchises.—My position is, that the power of this Common Council in reference to new ferries, is a delegated legislative power; that that which is delegated to us is a franchise, and that we are bound to exert it on this application.

Mr. HOLDEN. It is now half-past nine; we cannot finish this discussion to-night; I think we ought not to have begun it at so late an hour. I wish we may adjourn.

Mr. BRUEN. I am disposed to hear the gentleman's argument on the constitutionality of this measure, and then to have the discussion adjourned.

Mr. JOHNSON. I have no objection to an adjournment, I will state the remaining points of my argument. I contend, first, that in regard to all these ferries, excepting Fulton Ferry, we have a delegated legislative power, which, when public convenience requires, we are bound to exercise; that if we do not exercise it, the non-exercise is a cause of forfeiture, and that the Supreme Court has power to take it from us; that it being a mere delegated legislative power from sovereign authority, that sovereign authority has power to take it away, if not properly exercised; that if we ought to establish the ferry, and refuse to do so from insufficient legislation, it is the duty of that sovereign authority to take away the power; and that the consequence of its being taken away would be to deprive N. York of the revenue of at present \$14,000 a year, which is likely to increase almost indefinitely. On the subject of taxation, I contend that this subject of a ferry is not to be connected with the subject of taxation of non-residents of the city of New York.

The settlement of this last question involves a power which does not belong to us; and I believe that the assignment of this as a reason for withholding this ferry, would be sufficient to show that we had misused our power. The same may be said on the subject of encouraging the prices of city lands.

The Board then adjourned until Wednesday evening, December 3d.

HENRY GODFREY WHEELER,
Reporter.

BOARD OF ASSISTANT ALDERMEN.

MONDAY EVENING, DEC. 8, 1834.

SPECIAL MEETING.

Mr. HOLDEN moved, that the Board go into a committee of the whole, on the subject of the New South Ferry; the same having been made the special order of the day. The motion being carried,

Mr. JOHNSON resumed his argument, as follows:

When I had last the honor to address the Board on the subject of the New South Ferry, I took the ground that *public convenience* required its establishment, and I entered into some argument, with a view to show the obligations of the Corporation of this city, in respect to the action which they should adopt, in the granting or refusing of ferries generally. I stated, also, that in addition to the obligations it imposes, it raised the question, what are the consequences which will ensue in case the Common Council refuse to exercise its delegated legislative power, as I then termed it? To establish the fact that *public convenience* does require another ferry between this city and Brooklyn, I mentioned that there were but three ferries as direct communications between the two cities; the Fulton Ferry, which was established on its present basis, in the year 1814; the Catharine Ferry, established in 1808; and the Walnut street Ferry, established in 1817. I also referred to the great increase of population in Brooklyn, Long Island generally, and the city of New York, since the establishment of the last ferry, and particularly since the establishment of the Fulton Ferry on its present basis, in 1814. I believe I stated on that evening, that the population of Brooklyn, in the year, 1817, amounted to about 2,000. This statement was erro-

neous; I find it was about 6,000; and now it must be estimated at 20,000; an increase sufficient for any purpose, without relying on an error. I stated, also, that the mass of passengers crossing over the Fulton Ferry amounted to about 8,000 per day, exclusive of carriages, carts, market wagons, &c., each one of which must have at least one person connected with it; and that the carriages, &c., amounted to about eight hundred per day; thus making from 8,500 to 9,000 persons daily passing over the river, at that one ferry. I made some remarks on the effects of the incumbrances, obstructions, and want of convenience upon our marketing, as a subject deeply interesting to our population, and as being intimately connected with it; and I spoke of this circumstance as making a loud call upon us to establish other ferries, in the hope that, by such means, the prices of our marketing might be reduced. I stated also that several new roads, particularly a railroad, were building from the East river to the town of Jamaica, on Long Island; that this road came to the water's edge at the south-east limits of Brooklyn—that is to say, to Atlantic street, formerly its boundary; that the Gowanus road shortens the distance from Fort Hamilton to New York three and a half miles; that the Gowanus Bridge aids in shortening the distance very much; and by way of showing on what principles other cities had acted, in extending their communications with the country, and to ensure as much freedom as possible in that respect, I referred to Philadelphia, Boston, and Baltimore, and I cited also the city of London. I then spoke generally of the cost of London bridges. I have now before me a memorandum, containing a specific statement, by which it appears that the sum of three millions three hundred thousand pounds sterling has been laid out on bridges by that city; in addition to which there has been expended on the tunnel under the Thames, the sum of four hundred thousand pounds sterling. The gross amount of these expenditures is three millions nine hundred thousand pounds, being equal, in our currency, to the sum of seventeen millions of dollars and rising. This, sir, is the principle upon which foreign cities act in establishing communications across their waters: and this is the mode in which liberalized minds throw out their expenditures for the good of the body corporate and of the people. I stated also another fact, which was very well calculated to alarm the holders of real estate in this city, namely, that by extending the surface of the city, and thereby bringing more lands into competition, rents must be reduced, to the great benefit of the rent-paying community, or, in other words, of the people. I expected to raise against me the clamor of all

those who were interested in land speculations, and probably all who had large investments in real estate; but I cannot, on this subject, consider myself sent here to legislate for any particular portion of people, or any particular section of the city. The subject is one of general, not city legislation, and we must legislate for the people at large. We are sent here not for the purpose of aiding our private fortunes, or the private fortunes of our friends, or of any particular class to which we belong; we are to act for the public good—we are to overlook the heads of particular interests, and grasp in our view the great mass spread around us. I did not legislate, therefore, to use this as an argument to show that, in addition to the requirements of public convenience, the *public good* requires this ferry. This subject brought me to the inquiry on the last evening:—what are the rights of the Corporation of this city, in respect to the powers that we are called upon to exercise? It has been often said here, particularly by the gentleman who has appeared most in debate in opposition to the grant of this ferry, that it is a “*franchise*” which we are to exercise; that we are in possession of a *franchise*; that this *franchise* is the power we hold over the ferries. Sir, the word is properly used, and I am thus particular because it is a law term. This franchise is vested in us by the charter: and in the charter we must find our powers. There is a distinction to be taken when we are discussing these questions of franchises, in connection with the Corporation powers, which should be borne strictly in mind. A Corporation is created by the sovereign power, and embraces a collection of individuals, and the authority and powers remain the same, notwithstanding the changes which from time to time may be made in the persons who compose the Corporation, and who may exercise its rights, or be interested in its property: hence it has perpetual life. Corporations are usually created for private purposes, and are invested with particular rights, powers, privileges, and property. Such rights, powers, and property being of private, as distinguished from a public nature, cannot be taken away: they stand on the ground of contract. A lot of land is given to a Corporation; can the Legislature take that away? No, sir, it cannot; it is a grant of property of a private nature, and properly appertaining to a private Corporation. But if powers of a public legislative character be granted to it, the Legislature may take them away. When a private corporation is created with the right to hold property, to do certain business or acts, and to forward its peculiar objects, whatever they may be, the sovereign power may still vest such corporate body with public legislative power; it may

delegate to a Corporation the same powers it may to any individual, in order to the performance of certain duties. It may give to it legislative duties, and almost judicial duties : partly so, at least. It is a common thing for Corporations to be invested with power to appoint judges. In England, the lord of almost every manor appoints the judge of his own manor-court ; and the right to make such appointment is a franchise, as is also the right to hold property. The distinction between them is, that the one is private, the other public ; that one cannot be taken away by the sovereign power, and the other can ; in respect to one of them the Legislature has no longer any control, over the other an absolute control. It is the power of the principal over his attorney.

The Legislature is bound to see that these delegated public powers are duly exercised. In reference to the ferry powers granted to the Corporation by the charter, I stated at the outset that there was a distinction to be observed. The right of the Corporation in the old ferry, (properly so termed, for so it is known in the charter,) is absolute as property ; it was granted in fee simple ; it is a grant as absolute as that of the King's farm to Trinity Church, or of the common lands to the city of New York. The Legislature has nothing to do with our power over that ferry, except indirectly through the Corporation of New York, as ferry masters, in case we should fail to furnish proper conveniences to the public of passing and re-passing the ferry ; and in such case, probably not the Legislature, but the Supreme Court would exert the authority to take away the right, for the abuse of, or not using our powers. But as it respects our powers to establish other ferries, we do not hold them as property, but as public legislative powers, delegated to the Corporation, and the Legislature may at pleasure resume them. To show the nature of the different grants in respect to our ferry powers, I will read some parts of the charter. In page 5, the grant of the old ferry is contained in the charter of King James, of 1686, which I before incorrectly quoted as the charter of Queen Anne : an historical error, by the way, which a thought should have corrected. The passage reads thus : " I, the said Thomas Dougan, by virtue of the power and authority to me given, &c, have granted * * * unto the Mayor, Aldermen, and Commonalty of the said city, * * * all and every, &c. * * * that is to say, the aforesaid City Hall * * * and the aforementioned ferry" (the old ferry meaning) "with them and every of their rights, members, and appurtenances, together with all profits, &c. which shall or may accrue, &c. * * * by the said City Hall, * * * Ferry. &c. &c., for the *public use and serv.ce*, of the Mayor, Aldermen, and Commonalty

of said city, and of the inhabitants of Manhattan Island aforesaid, and travellers there, together with full power, license and authority, to the Mayor, Aldermen, and Commonalty and their successors, to establish * * * all streets, * * * ferries and bridges in and throughout the said city and Manhattan Island aforesaid, necessary, needful, and convenient for the inhabitants of said city and Manhattan Island aforesaid, and for all travellers and passengers there." Thus, we see the grant of the old ferry is an absolute grant; but the purposes for which it was granted were the benefit of the inhabitants generally, and travellers and passengers are particularly specified, and the powers to establish other ferries are for the like general purposes: in other words, it is a grant for *public convenience*. By the Charter of Queen Anne, granted in 1708, page 29 and 30, this grant is renewed: "after reciting that the Corporation had petitioned for a confirmation of their ferry rights, and for vacant land on the Long Island shore, for the better improvement and accommodation of the said ferry, with full power, leave, and license, to set up, establish, * * * one or more ferry or ferries for the use and accommodation of all passengers and travellers * * * as they shall see meet and convenient, and occasion require." The Charter grants "unto the said Mayor, Aldermen, and Commonalty of the city of New York, and to their successors and assigns, all that the said ferry, called the Old Ferry on both sides the said East river, for, &c. * * * with all and singular, the usual and accustomed * * * fees, &c. to the said Old Ferry belonging * * * or thereout arising; and also, the land asked for in the petition." This, then, is a grant on the application of the city of New York for land over on the Brooklyn side, and the confirmation of our ferry rights, "for the ease and accommodation of passengers." It grants also the land between high and low water mark, from the Wallabout to Red Hook on the Long Island shore, and for the same "ease and accommodation of passengers and travellers." And, in fact, in every instance in which ferries have been granted here, it has been for the accommodation of the public in some form or other: in other words, for *public convenience*. This grant of Queen Anne contains a clause which we do not find in that of King James; it is that contained in every deed, commencing with "to have and to hold," &c., which, in law language, is termed the *habendum* clause; thus vesting the property referred to in the grant, in the city of New York, distinctly in *fee simple*. At the foot of page 31, the charter proceeds:—"And we do further of our especial grace, &c., * * * give and grant unto the said Mayor, Aldermen, and Commonalty, and their successors, full and free leave and

license, to set up, establish, keep and maintain one or more ferry or ferries, as they shall from time to time think fit and convenient, within the limits and bounds aforesaid, for the ease and accommodation of transporting of passengers, goods, &c. &c., between," &c. &c. "and full and absolute power and authority to make * * * all manner of by-laws, orders * * for the more orderly keeping, &c. the aforesaid ferry, * * * or any ferry or ferries which shall at any time or times hereafter be set up, established, or kept within the bounds aforesaid, by virtue hereof." Now, sir, here is the distinction clearly taken between the granting of a ferry on the one hand in fee simple, and on the other of a legislative power to establish other ferries. There is an *habendum* clause in this grant of the Old Ferry which I have read; but in turning over the leaf, I find a grant without an *habendum* clause of the additional legislative powers which we are now sitting in council upon to determine whether we will or will not exercise them. The grants are again renewed in the charter of George II., which were granted in the year 1730. At page 66, it grants "to the Common Council * * the sole, full and whole power and authority of * * establishing * * * such and so many ferries round Manhattans island, alias New York island, for the carrying and transporting people, horses, &c. &c., * * * as the said Common Council or the major part of them shall think fit." This is another grant of the legislative power, and on these words—"think fit"—I shall hereafter comment, and cite an authority which I think will be respected by this Board. At page 98, the subject of ferries again occurs; and on an examination of it to-day, I am led to think that the expressions I used in reference to it the other evening were rather too broad. The charter here "ratifies and confirms unto the Mayor, &c. * * * the ferry and ferries on both sides of the East river, and all other ferries now and hereafter to be erected and established all round the island Manhattans, and the management and rule of, and all fees, ferriages, &c. to the same or any part thereof belonging or to belong, * * * and also to make laws and rules for the governing and well ordering of all the ferries now erected or established, or hereafter to be erected or established round the said island Manhattans,"—and to this grant is added the *habendum* clause. This part of the charter contains not only a grant of ferry rights, but also of legislative rights in respect to ferries, to us, *our successors and assigns for ever*. But whatever construction may be put on this latter clause, as vesting in the city the right to the fees, perquisites and profits of all such ferries as may be established, whether by the city or some

other power, still it cannot deprive the legislature, the sovereign authority, of its power of resuming to itself the legislative powers to establish ferries embraced in the grant. The legislature or sovereign authority cannot so divest itself of any portion of its legislative powers, as to preclude it from resuming them. The authorities I shall have occasion to cite established this principle. In all other parts of the charter than that last read, the grants of *property* to the Corporation are kept separate from the grants or *delegations* of *legislative powers*: here they are conjoined. And together with an absolute grant in fee of existing ferries, is given the right to establish "such and so many ferries" as we "may think fit."

Like powers have also been vested in us by the Legislature of the state. Now it is to be observed that this power to establish as many ferries as we may *think fit*, is not granted to us without limitation, for there is a rule in the charter by which all our legislation is to be tested. At page 62, of the charter of George II, [and this rule now prevails, and is one under which we are daily acting,] it is stated—"the Common Council * * * have and may, and shall have full power, authority, &c., to ordain, make, &c., all such laws, statutes, ordinances, &c., as to them, or the greater part of them, shall seem to be *good, useful, or necessary* for the *good rule and government* of the body corporate, aforesaid, * * * and for the further *public good, common profit, trade, and better government and rule* of the said city."

We are bound to make all laws that are required for the good rule and government of the body corporate, and none other; and when this clause by which we are limited and restrained, is compared in connection with that which gives us the right to establish as many ferries as we think fit, it will be apparent that we are bound to establish such ferries, and so many of them as the "public good, common profit, trade, and better government of the city" shall demand, and public convenience shall require at our hands. I say we are bound to make so many, and such laws as the good rule and government, common profit, and trade, of the body corporate require. Heretofore, this subject has been submitted to a lawyer of eminence, whose opinion is highly respected, and ought to be, especially when given on a subject of simple law, disconnected with executive power. His language is, "the authority to establish ferries, granted to the city by the charter, is a branch of the sovereign power, and like all the other legislative administrative powers conferred on them, was granted to the Corporation *for the good rule and government of the city*," and not as a subject of property. In this

respect it is to be carefully distinguished from the express grant of the Old Ferry, contained in the first charter, and subsequently confirmed; * * * * they have a freehold property in it; but the general power to establish other ferries is delegated to them as depositories in this respect of the prerogative of government; for the purpose of exercising this prerogative they were substituted in the place of the crown, and they are authorised and bound to exercise it for the general good, though the rents and profits are to go into the city treasury." This is the opinion of the present attorney general of the United States. When, therefore, by one clause we are authorised under our delegated legislative powers to establish "so many ferries as we may *think fit*;" under another clause, and a general one, relating to the same delegated legislative powers, we are to establish such "as shall be good, useful, and necessary for the good rule and government of the body corporate," and the public good, common profit, and trade "of the city shall demand or require:" does not the "public good, common profit, and trade" of this city require the establishment of another ferry to Brooklyn?

Am I to hear when I have done with my portion of this debate, that there is no distinction between these franchises, of sustaining the Old Ferry and the establishing of new ones; that franchises granted to Corporations cannot be taken away; that we hold our legislative powers by the same tenure we hold our private property? Here, in this opinion of the attorney general, is an authority which directly takes the distinction; and the rule here laid down is that by which we must be judged. "It was granted to the Corporation for the good rule and government of the city;" "it is to be carefully distinguished from the express grant of the Old Ferry;" there is the distinction broadly taken, and correctly, between franchises held in respect to property as a private corporation, and those which we receive as legislative powers, delegated to us by the sovereign authority, and which we hold as a boon of sovereign authority. The power in this Corporation to establish ferries is the same as that vested by law in the county courts of the country: ferries in the country are established by the county courts of common pleas.

It is well known (in respect to the statute,) that for country ferries application is not made to the Legislature, but to the county courts. Is this power vested in the county courts so absolutely that it cannot be taken away? Certainly not. The power is delegated to them to save the Legislature, the sovereign authority, the necessity of acting in all these local concerns. But it may be resumed by the Legislature at

pleasure, such being the powers vested in this Corporation ; the inquiry arises, as to what will be the consequences of our not exercising them when the occasion demands their exercise. It has been said that the power of establishing a ferry is a franchise : a franchise must be derived from sovereign authority. I cannot explain the meaning of this word in a manner more satisfactory to the Board, than in the language of the late Chancellor Kent. In his Commentaries, 3 vol. p. 459, he says, " whoever claims an exclusive privilege with us, must show a grant from the Legislature." " Franchises are certain privileges conferred by grant from government, and vested in individuals," 458 : " special privileges, conferred on towns and individuals, in a variety of ways, and for numerous purposes, having a connection with the public interest, are franchises," 459. In *Com. Dig.* it is said, " a ferry is a franchise, which cannot be set up without the King's license." It is further said, " that a ferry is no more than a common highway ; the East river, like all other public rivers, are highways ; and we are called upon here by those who would refuse this grant, to close this public highway, or rather not to establish a communication in a new direction over that magnificent highway. The power we are discussing, corresponds in every particular with the above characteristics of franchises. It is a grant derived from the sovereign authority ; it is vested in individuals, or what is tantamount thereto, in a corporation ; it is connected with the public interests ; it is, in short, a right to establish a public highway. Now, sir, here is this authority, this great power vested in us under the charter as I have read it, and possessed of the character of a franchise which I have described, and I would ask, in whom *is this power vested* ? It is in the city of New York, a corporation for some of its purposes public ; a corporation possessed of great legislative powers : and the subject in discussion is the establishment of a highway—a ferry across the East river ;—and what is the East river ? It is a way over which every man has a right to pass : and on which every man has a right to pass, not only up and down the stream, but on and across it, in every way and in any direction that he pleases. It is a portion of the great public domain, in which every man has a right as firm and inalienable as the right which he possesses to the free enjoyment of the air and the light of heaven. It may be asked, then, by what right are these ferries refused or granted ?—why may not any man establish them ? Because the sovereign authority is called upon to restrict private right for the advancement of public good. If every man was permitted to establish his own ferry and run his own boats, what sort of communica-

tion would there be across the East or any other river?—miserable, unquestionably. The sovereign authority thus says to one man, you shall have this ferry, but upon certain conditions: that is to say, you shall keep it up, and you shall accommodate the public with sufficient conveniences of passing and repassing. But when one grant is not sufficient for the accommodation of the public, the legislative or sovereign authority, which has granted it to one company or individual, is bound to furnish further accommodation by new grants, so long as they are required for the public good and public convenience. It is to be presumed that the legislature will always do so; and if they refuse, they are responsible to their constituents only at the ballot-boxes. But if the legislature has delegated this power to any individual: if it has delegated it to any body of men, or any corporation, and he or they shall refuse to exercise it, they run in the face of the first principles of their power; they show themselves unworthy repositories of the trust which has been reposed in their hands, and like the unjust steward, they must be cast out to make friends of the mammon of unrighteousness. This franchise, being vested as above described in this corporation—a public one for so many purposes as it is, and relating to a subject so public in its nature as a public highway—it would result in the nature of things, that the public, the people interested, had a right to demand the exercise of it at our hands. The law is in accordance with this principle:—if we refuse to exercise this franchise on a proper occasion, we shall forfeit it. The language of the rule is “where the object of the franchise is perverted, and there is either a *mis-user* or *abuser* of it, the franchise is forfeited.” [*Cruise Digest. Franchise.*] That such is the law as I have explained it, is expressed in the very able report made to the Common Council in 1826 by the Law Committee of that year, known as the report of Pierre C. Van Wyck. It is a very able document, and well worthy the perusal of any gentleman in this Board.

Again, sir: we are not only under this obligation, as holders of a franchise, strictly as such, and at common law, but we are trustees, and bound to execute our trust; and for whom are we trustees? In reference to the exercise of this power, it has been said by the gentleman who preceded me upon the previous evening, that we sit here as legislators of New York. And it has been asked, “whether we, the legislators of New York and not of Brooklyn, shall give to the inhabitants of the latter place privileges which we ourselves are not permitted to enjoy.” Sir, is it a fact that we sit here as legislators for New York alone? I deny the position, and

I assume as the true position, that we sit here in the exercise of powers conferred upon us, delegated to us by the sovereign authority, as legislators for Brooklyn as well as New York:—and not for Brooklyn and New York alone, but for the people of the state of New York; and if the gentleman is not satisfied with this, I will go further, and say that we sit here as legislators for the people of the United States. And the question might well be asked, whether, if the legislature of New York should refuse to establish this ferry, Congress would not have the power to grant it? Every word that I have read, showing the limitations attached to every grant of these ferries, shows that it was made for the convenience of the inhabitants of New York and of *travellers*;" and in some instances, "of New York and Long island, and *passengers and travellers there*." It is a power which we derive from the legislature, and we act here ministerially to a certain extent. We act properly in our legislative character, but in this delegated capacity it is an authority of the people of the state of New York, and not a power delegated to us by the people of the city of New York, who have elected us to our places. Gentlemen are bound to look abroad and not at home when they are settling this question; they are not to inquire whether we are about to grant "privileges which we ourselves are not permitted to enjoy." If this is so, if such are our powers, and we are trustees of the public for this city and Brooklyn and the people generally, what are the consequences of our not using those powers?—A forfeiture, most surely. And now I will call upon the gentlemen for their serious consideration: for as they exercise their powers, so are they responsible; and as they judge, so must they be judged. I say, then, that if we do not exercise this power, when the proper time has come for its exercise, and when we are called on by public convenience to do so, the neglect amounts to a forfeiture of it. If we do not keep up our ferries properly, and establish such new ones as are required for the public convenience, our power is forfeited. And even if this power (and for the sake of argument, I will grant all that the gentleman of the fifteenth would ask) if this power is a legislative power, vested in us *in fee simple*, then we become, and are the ferry masters: and as such, if we fail to furnish accommodations sufficient for public convenience, this will work a forfeiture of our power; and the Supreme Court would, on demand, issue its writ of *scire facias*, requiring us to show cause why the power should not be taken away; and in the proceeding would be involved not only the charge of *mis-user*, but of *abuser*, and for either of these causes the power would be for-

feited. This rule is well laid down in this language:—"all franchises are granted *on condition* that they shall be duly executed according to the grant, and if they neglect to perform, the terms may be repealed by *scire facias*," [12 Mod. 271.] Franchises are forfeited by "mis-user," "non-user," and "abuser," so that whether we hold this franchise as a mere delegated legislative power, as I claim we do; or as a power absolutely vested in us in fee simple, not subject to the interference of the Legislature; still the consequence of forfeiture follows the same circumstances, but in a different form.

I have been at the trouble of looking up this language of the law, in order that the gentleman shall not say I have spoken without authority; the rules I have laid down have prevailed "from time to which the memory of man runs not contrary."

Thus, then, sir, we stand in regard to our powers, and the consequences which depend on our action: the character of those powers is a franchise, and the consequence of not exercising them is a forfeiture.

I have said that a distinction exists as to the power of the Legislature over grants to Corporations, between such as are of a legislative character, or of the nature of property. It is supposed that the grant being once made it cannot be recalled, as it would be a violation of the clause of the constitution, restraining the Legislature from passing laws impairing the obligation of contracts.

Let us see what the Supreme Court of the United States says on this subject: that tribunal will as yet command the respect of this Board, whatever may have been the assaults made upon it elsewhere. I cite the famous case of Dartmouth College, [4 Wheat. 518.] This question of granted rights, as against the sovereign authority was agitated then, and the distinction which I have spoken of, was taken. The question was, whether the Legislature could interfere with the chartered rights of Dartmouth College, by changing its government and giving it new officers. The report says, [p. 629] "The provision of the constitution never has been understood to embrace other contracts than those which respect property, or some object of value, and confer rights which may be asserted in a court of justice. It has never been understood to restrict the general right of the Legislature to legislate on the subject of divorces." * * * * * "If the act of incorporation be a grant of political power—if it create a civil institution to be employed in the administration of government—or, if the funds of the College be public property—or, if the state * * * be alone interested in

its transactions, the subject is one in which the Legislature of the state may act according to its own judgment, unrestrained by any limitation of its power, imposed by the constitution of the United States." * * * * *

[p 63.] "The right to change Corporations is not founded on their being incorporated, but on their being the instruments of government, created for its purposes. The same institutions, created for the same objects, though not incorporated, would be public institutions, and of course be controllable by the Legislature." The same question was raised on the same principle, settled by the Supreme Court of this state, in the case of the Trustees of the Presbyterian Church, against the city of New York, [5 Cow. Rep. 538.] The Corporation conveyed land to the Church for a cemetery, &c., and entered into the usual covenants for quiet enjoyment for ever, as a burial ground, and afterwards, in 1823, the Corporation, by an ordinance prohibited the use of the premises as a cemetery for the burial of the dead; and the court decided, that the ordinance did not form a breach of their covenant, but that the Corporation made the covenant in their private capacity; but when they passed a law prohibiting the burials within the city limits, they made that law in their legislative capacity. That this corporation has two distinct characters, one that of a private corporation, and the other that of a public body, possessing legislative powers for the public good. I forbear to cite law further upon this subject, and close this argument on the legal question of our rights; it is a dry legal inquiry, interesting only from its importance. But when we are sitting in the exercise of such great powers, it becomes us to look closely into our situation, and to be careful that we hand down to our successors all the rights which came into our possession, and to hand them down unimpaired. I have said that the legislature were bound to see that the portion of its powers which it had delegated to others be duly used, and when the public good requires. If this ferry is refused, from whom will the refusal come?—Not from the lower wards, for they are all in favor of it. It is the landed interest of the upper wards from whom the objections come, that great landed interest of "up-town," which is daily increasing, and must go on increasing, and which now bears with controlling powers on the councils of the city. A few years more must increase this power, by increasing the number of the upper wards. If this ferry is now refused, the fact will be established, that the general interest of the city, and I may say of commerce and of trade, the life and soul of the city, is to be made to bend to local and opposing interests. And the further fact will be established, that this Com-

mon Council is an unfit repository of a general legislative power; and especially of this power to establish ferries. It will then be the duty of the Legislature, whatever may be its desire to deprive us of it; the refusal of this ferry will be a note of warning that the Corporation is an improper repository of the power. I have heard attempts made to excite public prejudices against this ferry. I have heard charges brought against the inhabitants of Brooklyn, for appealing to the Legislature of the state to establish the required communication between New York and Brooklyn, in case the Legislature of this city should refuse to grant it; and these charges have been thrown out, as if with an intention to excite the pride and the supposed injured dignity of this city, to resent what might be considered an insult. Sir, I hold that the inhabitants of Brooklyn have the same right to approach us in demand of their rights as our constituents in the city, and that citizens of the state have to approach Governors, or superiors in office. We sit here to all intents to administer government for the benefit of all these portions of the community, and with principles laid down for our guidance, which to my mind are clear and unquestionable. I say, the people of Brooklyn have a right to demand this ferry of us, and if we refuse it, to go to the Legislature. And upon what grounds are we to refuse this request, and what motives are to be called into action to induce this Board to refuse it? I hear only of two grounds taken in opposition to the ferry. One is, that the lands of New York will not be *appreciated* in value, but those of Brooklyn will be, if we grant the ferry; whilst ours probably will remain stationary. In the first place, if we are to legislate upon this ground, we are to legislate for a single class of the community; for the city land-holders only, and not upon the enlarged scale for the public at large. We are to legislate not for the public good, but for private benefit. We shall not then be sitting here as Legislators with expanded views, as men intending to discharge their duties upon enlarged principles of government, but to legislate for a corner, and that a narrow and contracted one. It is our duty, sir, to legislate for the public good; not for the benefit of this, that, or the other class of men; and, especially, not for the benefit of our own pockets. There is another ground taken. It is said that we must retain the exercise of this power, until Brooklyn is brought to unite with New York in an agreement that every man shall be taxed for his personal property at his place of business, and not as now, at the place of his residence; or, at least, that personal property shall be taxed at the place where it is situated. Is it any

where found in our charter that we have power to settle a rule of general taxation, or to change one already fixed? What right have we to lisp upon the subject of taxation; upon this, one of the most delicate, deep, and intricate subjects of the science of political economy? What gentleman of this Board is master of this most nice and delicate question? For myself, I do not pretend an intimacy with it; but I do know that wise men of other times have wrought it into a rule, that personal property has no domicile, that it is floating, transient, changing; and they have thought that the only location which could be given to it is the domicile of its owner. I do not know on what principle a change in the rule of taxation is to be effected; a rule which has prevailed, not only during this, but the last century; and not only in this state, but in all other states; a rule that operates as widely as the taxation of personal property is known, and is consistent with every principle of law affecting personal estates: yet, we are called upon on this petty, simple question of the establishment of a ferry, to uproot the whole rule and this whole system, and throw it into a chaos, in the vain hope of laying the burthen more equally on the citizens. Does any man who has ever looked into this subject, pretend to say that taxation is equal upon all? In the course of my intercourse with the world I have never heard such a pretence; nor do I remember ever to have seen it recorded. On the contrary, all that Legislators have ever hoped to accomplish in this respect has been, that the rule should be placed upon the best footing possible, and that it should operate with the least possible injustice upon any. But there is a rule which says that this rule of taxation should be permanent; the people can then mould themselves to it, until it shall fall upon them with the least possible oppression. But it is proposed here that we hold on to our power till we compel the inhabitants of Brooklyn to unite in an application to the Legislature to tax every man's property in the place where it is located, or at his place of business. Either rule is equally deleterious. It may be true, that gentlemen residing in Brooklyn are protected by our watch and lighted by our lamps; but they must pay their taxes to Brooklyn for watch and light. It is then said they remove to and reside in Brooklyn to avoid the greater taxation of New York. It will be found in a short time that gentlemen gain nothing in point of taxation by residing in that city. But how will you reach this matter, and where will you stop, if you undertake to tax in this city the residents of Brooklyn doing business here? Some general rule operating throughout the state must be established: a partial one for New York alone cannot be made. If you tax

personal property where it is located, what will be the consequences to this city, as a question of expediency?—Does New York borrow more than she lends?—Does she draw from abroad more capital than she sends elsewhere? I doubt it. What are the amounts of bonds and mortgages taken up in this country by the residents of New York? I might name three or four individuals, and if I were to say that their loans alone amounted to half a million of dollars, no one would question me. Take the Trust Company: its loans will amount to that sum. The Trust Company being located here, is taxed here; our money corporations being located here, are taxed here; and although I find it stated in a document upon our table, from that vigilant and valuable officer who fills the office of Comptroller, that this taxation of incorporated companies is of itself a change of the general act, and exception to the rule, that property is taxable at the owner's residence, still I look upon it only as an adherence to the rule, that personal property is and should be taxed where its owner resides.

As to the policy of the change, however, there are wiser men than myself who think ill of it. There are no means of getting exactly at the matter, how much we shall lose by a change of the rule; but I ask, who owns the stocks of the railroads, canals, banks, insurance companies, manufactories that are scattered over this country? If it is any criterion to judge by, to observe the places at which the agents of new incorporations congregate, when their stocks are to be taken up, and to watch their movements there, then I should say they are the citizens of New York. There is no record from the interior which can clearly settle this point: but the agents engaged in filling up the stock, by their gatherings here, satisfactorily show the fact, that the railroads, canals, country banks, and manufactories of all descriptions are supplied to a marvellous extent from the coffers of this city. And as to bonds and mortgages, there is not a clerk's office in the country that does not furnish proof of my position. What amount on bonds and mortgages has been loaned in the city of New York by persons residing out of it? In the year 1831 (I find in Williams' Register) the sum of six millions six hundred and sixteen thousand dollars was loaned on bonds and mortgages in the city of New York, of which four millions were loaned by individuals residing in this city; two hundred thousand by persons residing in the state and out of the city, and three hundred and thirteen thousand dollars out of the state—I speak in round numbers. Thus, all the loans that New York has made of foreign capital upon her real estate, amounts only to some five hundred and thirteen

thousand dollars, out of six millions six hundred and sixteen thousand six hundred dollars and forty-two cents. There are some three or four private individuals (to go no further) whose loans alone to the country make these loans dwindle into insignificance. And in the face of such facts, we are called upon to throw our system of taxation into confusion, and to empty our treasury, that we may force Brooklyn to her knees, and by the means of refusing a South Ferry!! We are told that this ferry should not be granted:—and why?—I can see only one reason why it should not have been given the moment it is asked for, and that is the public excitement which has been stirred up, as I conceive, by certain land-holders, and been called public sentiment, and this is sometimes made without much off-point effort. The man who is easy and comfortable, troubles himself but little about what is going on about him; but if there is a busy-body who has schemes of his own to accomplish, he will, during the quiet sleep of others, put every energy into action, in the preparation of his plans and spreading of his toils. He will excite the feelings of the community till he has filled it with his doctrines: and then, on the developemnt of his schemes, cry aloud that it is *public sentiment!!* I have heard gentlemen say that their constituents are opposed to this ferry.—Sir, I am sure they would not be opposed to it if they understood the matter; and if I rightly understand the opinions of our citizens on the matter, there is not a man opposed to the establishment of the ferry, except the holders of real estate. This question has taken this solemn form, and become a matter of so much consequence, by means of the controversy existing between persons interested in land on this side of the river, and on the other. I care not for either of them; I care not whose pocket is benefited by the establishment of this ferry. They have, however, raised for us a question pregnant with great public consequences to this city, and involving the exercise of a right, the non exercise of which is in danger of doing our constituents and this city a very great evil, and depriving the city of revenue amounting now to fourteen thousand dollars a year, and capable of an almost indefinite increase. But, sir, is the fact as stated in regard to these lands, so? Are lands to be deteriorated here by the establishment of a new South Ferry? I would ask whether they are deteriorated by the application of steam boats to the ferry, which in 1814 took the place of the ordinary row-boats and sail-boats? I would ask whether they were deteriorated by the introduction of steam-boat navigation on our rivers, and whether they have been deteriorated by the opening of avenues of communication from the interior to the river?

Are the gentlemen right in saying, that by opening the widest possible communications, lands become deteriorated?—far from it. I believe, indeed, that if this ferry is granted, there will be a *jump* of property in Brooklyn, and that many pockets will thereby be burned at last. I believe that, as is usual in such cases, property will rise, and immense prices will be given; but the bubble will break, and all will soon come to its proper level again. With that, however, we have nothing to do. There are some interesting facts connected with this subject of increased facilities of communication with the country, which I should be glad to submit to the consideration of the Board; they are dry, but I like them because they lead to comprehensive truths. [See Williams' Register.] In the year 1817, the real estate of this city was assessed at fifty-seven millions of dollars. From that year to 1824 it fluctuated, and in 1824 it was assessed at fifty-two millions. In the year 1825, the Erie Canal was finished, and the amount was at once raised to fifty-eight millions. In the year 1826 it amounted to sixty-four millions, and it continued thus rising till 1828, and in that year and 1829 it became stationary; it was then assessed at seventy-six millions eight hundred thousand dollars. In 1830, the great Ohio Canal was in part finished, and real estate here started at once from seventy-six to eighty-seven millions, and continued so to rise till 1831, when it was assessed at ninety-five millions; and this year it is raised to about one hundred and fourteen millions, making a gradual and regular advance of about ten millions a year. During these years the Ohio Canal has been progressing to its completion, and we now find the means of communication increasing day by day over the whole surface of our land and of our waters. Sir, in looking back a few years, what do we find to have been the increase of this city?—for, we are to refuse the South Ferry because *our* lands will be injured and the property in Brooklyn will rise. In the year 1818, when I first came to this city, Canal street was far out of town. In the lapse of a few years, the city has spread over a compass, and with a rapidity heretofore unknown in the annals of the world. From the introduction of steam navigation to the opening of our western waters, we have seen our city advancing in magnitude and population, to an extent unparalleled, and its lands rising in value beyond precedent. And what, I would ask, in ten, twenty, or fifty years, is to be the destiny of this city? Now, I say it is in fact, and as the commercial emporium, divided into three parts, of which the lower wards constitute one and the business portion, the upper wards a second, and Brooklyn the third. Business is located here

in these lower wards, and here it will remain; and what is known of Brooklyn beyond this city, otherwise than that as part of the great city of New York? But if we are to go on for thirty or forty years increasing as we have done, the island of New York will not be sufficient to hold the population of the city. We must extend our limits in some direction, or the poorer and laboring classes will be doomed to stifle in crowded dens. We must give them space, or the pure air will never touch their cheeks; the bloom of health will forsake them, and we shall see around us all the miseries attending a dense and crowded population. With one of the finest harbors in the world, centered as we are upon the point of a gore of land, and every step our population advances from a given point, receding from the place of its employment; we owe our thanks to Providence, that with these advantages he has given us Long Island on one side of us, and Jersey city on the other, over which to extend our limits; these will soon be a portion of the emporium; and imagination can scarcely stay her flight till she encircles Richmond within the borders of the city. What is the cause of the magnitude of this city—and whence do we derive our wealth? I have referred to our canals, our railroads, and internal communications. Look at the *wide West*! There you find the sources of our strength and our commercial prosperity: you find her pouring down her immense stores, and her merchants meeting here to exchange them with the world? Open your railroads, your canals, your rivers, and the lands of New York will become invaluable; when you pass the Hudson seeking the means to add to the greatness of this city, where will you stop? Almost the mountain boundaries of the Mississippi will send you their stores; the lakes will pour down their riches at your feet; the prairies will be cultivated for your benefit; and here, in the city of New York, is to be transacted the immense business of this immense interior. Will men not be satisfied with this, and the boundless value that by such means is to be given to their lands and their possessions? and with such prospects before them, are they to dwindle down in their own narrow contemplations, and find a death to their hopes in the granting of a South Ferry? I fear to trust myself in comment upon views so narrow; views which would center all one's contemplations in one little spot, and that spot "my own," lest language should fail me suited to the decency of debate. With this great field of enterprise before us, and these sources of immense wealth, with the grasp of a free and liberal-handed and liberal-minded policy, it strikes one's

feelings with a blight, that these petitioners should be spurned from our doors on grounds such as those which are alleged against the establishment of this ferry.

Mr. BRUEN, the President, in reply to Mr. Johnson, said:— I will not attempt to follow the gentleman from the third ward in the great latitude in which he has indulged himself in the course of this debate. I could not if I would, and I would not if I could. He reminds me always of the great Roman orator—for he touches nothing that he does not adorn.

I do not choose, however, that he shall make a feigned issue between himself and me, in relation to the great subject of internal improvement, or the opening of all avenues of communication between this city and its immediate neighborhood. I am content to follow, and will endeavor to surpass him, in any and every effort that can by such means promote the prosperity of this great city. I expected, for the gentleman had promised me when this question was before incidentally debated, that at this time he intended to offer such arguments as would convince the Common Council that the present application for a South Ferry could not in justice be denied. I have listened with interest and attention to the remarks of the gentleman, but as yet I have not heard them. He has, instead of stating the claims of the petitioners to the favorable consideration of the Common Council, introduced an elaborate disquisition upon points of constitutional law.

He has been discussing the rights of this Corporation, and calling in question their ancient franchises, more like the advocate of a foreign state than as a member of this body.

The rights of this Common Council I had hoped would never have been called in question here ; but so long as I shall have the honor of a seat in this hall, I mean to support, to the best of my abilities, the chartered rights of this city against legislative usurpation and arbitrary power, come from what source it may.

I have not, Mr. Chairman, studied this subject with a view to enter into any subtle disquisition upon the rights of Corporations either public or private, or to discuss the principles of constitutional law which may arise, where in any supposable case the rights of the Corporation may be invaded. But I may with confidence refer the gentleman to the case of Dartmouth College, from which he has quoted so largely, as vindicating and sustaining in its greatest latitude every principle of law upon which the rights of the Corporation could be maintained before the highest tribunal in the country. The gentleman has seemed to suppose, that, according to the theory of our constitution, the sovereign

power was vested in the Legislature; the same view was taken of this matter by the Committee of the Legislature of this state, of which Mr. Beardsley was Chairman, which sanctioned the appointment of a measurer-general of grain. That gentleman, however, together with my learned friend from the third ward, is in this point mistaken. The theory of our government contemplates that the sovereign power resides in the people, who, whenever they shall choose, shall and will alter the constitution of the state. The power of the Legislature is to make laws—it is not judicial. How did the kings of England, in their wild attempts to exercise arbitrary power in this country, seek to violate the chartered rights of our ancestors in the colonies of Massachusetts and Connecticut? Was it not by a quo-warranto before a corrupt judicial tribunal? The right of the Legislature of a state to alter and amend any existing political charter at the request of the corporators, where public convenience and the changes of our political condition may require it, will not be denied; but I cannot and I will not for a moment admit the principle, that the Legislature can divest this city of the right of establishing ferries from which we derive a revenue, any more than they can take from us the City Hall. Far distant be that day when the vested rights of the Corporation of this city—its ancient franchises—its patronage and its property, shall be thrown by the revolutions of party into the political arena, to add another trophy to the spoils of the victors!—But, sir, I entertain no such fear. The right to regulate ferries was recognised in the charter of the 15th Jan. 1730, under the great seal of the province, by authority of the crown; that charter of George II. was substantially but a repetition of the charter of James II. in 1680, and its authority was confirmed by an act of the provincial legislature, passed the 14th of October, 1732. But I would not seek amid the dusty parchments of the buried kings of England for the rights of this Corporation—they are anterior to the formation of the Constitution of this state, which was framed by delegates from this city. By virtue of its authority, it forms part of the law of the land and the constitution of this state, which cannot but with great wrong be violated. If the Legislature of this state, however, have any power in the premises, which I am not at all disposed to admit, so late as the year 1822, they passed an act prohibiting any person from interfering with our ferries, under a penalty of one hundred and twenty-five dollars for each offence. The legislature of this state, however latitudinarian they may be in some respects, will never undertake to divest this city of any of its franchises for the benefit of Brooklyn, although it may be convenient to ap-

point to some of our most lucrative offices, the friends of those who now rule the state, I am clearly of the opinion, and I am not alone in this respect, that the Supreme Court of the United States would declare that the law of the state of New York, which took from the Corporation the right of appointing measurers of grain was unconstitutional, as being a law impairing the obligation of contracts. The fees derivable from that office, were a part of the revenue of this city, as much as the rent of the ferries, being part of the public property, to be disposed of by the Corporation representatives, for the public benefit. The right of the Legislature to modify and amend civil corporations, relates exclusively to their political character; such as the alterations of the political divisions of the city into wards, and the subdivisions of towns and counties in the state. You might as well tell me that the Legislature could erect a state arsenal or a state prison on the public ground in the Park, as that they have a right to take from us the right to regulate ferries, or any other valuable franchise. These rights have been entrusted to us for the public benefit, and we are to be the judges of the necessities of the case. Every consideration of sound policy requires that there should be a unity of jurisdiction in a great commercial city: and it was for this reason that the Legislature confirmed to the Corporation the right to the land between high-water and low-water marks upon both sides of the river; it was to afford the means of an unity of government, and to avoid conflicting jurisdictions. Having, as I believe, demonstrated that the right to establish ferries belongs to the Corporation, and not to the Legislature, I am very far from being willing to admit what I understood the gentleman to assert—that Congress have any jurisdiction in this matter.

Mr. JOHNSON. I said that if the Legislature of New York refused to grant a ferry when public convenience required it, I was not prepared to say that Congress had not the power to do it.

Mr. BRUEN. I do not admit the right of Congress to interfere in a matter where they can have no jurisdiction. The Corporation would of course grant a ferry where any great public necessity required it, and it did not conflict with what they supposed were the interests of the citizens of New York.

I will make one remark in reply to an observation of the gentleman, in which with great earnestness he made an appeal to our liberality. In the expansiveness of his generosity, he seems to have comprehended the whole human race as well as our sister city. The members of the Common Council who act with me in this matter, profess to be governed by no such expanded views. I am of the English doc-

trine of free trade, which is only free where it can benefit England. I am sent here to legislate for the city of New York, and not for Brooklyn.—I am bound to endeavor to understand, and as well as I can to defend the interest of the fifteenth ward, and of the city as a whole; and if I shall think that the establishment of this ferry will abstract from the southern extremity of New York the centre of its commerce the population which would otherwise reside upon this island, I am bound to vote against it; and so is, in my judgment, the gentleman from the third ward, however much the wishes of either of us might invite us to do otherwise. One word as to the attitude in which these *petitioners* present themselves before us. The very element of the gentleman's argument is, that we have no right to refuse; that if they do not get it here, they will get it elsewhere: the aid of Congress and the Legislature are to be successively invoked to redress the wrongs of the inhabitants of Brooklyn; the members who vote against this application are designated as any thing but just and liberal men. Let us examine this matter a little more closely;—is this application, in point of fact, from the people of Brooklyn?—The names that have been read prove otherwise. The points proposed on this side of the river, are at Whitehall and Old Slip: to both of which we have the remonstrances of by far the greater part of the merchants and owners of property in that vicinity. These, in a commercial point of view, are far too valuable to be appropriated to any such purpose. If this ferry were intended as an avenue into the city, instead of an invitation out of the city, its location would have been elsewhere. The side at Long island is at Patchen's dock. Let any gentleman go over there: and amid the silence, interrupted by no sound but the croakings of the frogs, and the far off rumbling of the wheels of commerce, he may look without being disturbed by the foot or the voice of man, at this Queen of Cities, reposing on the sea! Where is the busy hum of men at mid day on the heights of Brooklyn?—her population is in New York. Her great constitutional lawyers, who are large property holders, to be benefited by this operation, are pleading in our courts of law.—Her merchants are avoiding a tax on their personal property, and at night they retire to repose with their treasures safe in their stores—guarded by our watch—lighted by our lamps—protected from conflagration by the perils of our firemen—and, if he shall happen to have a suit at law, he will invoke to his aid the judges of our courts and compel our citizens to become his jurors: and when we ask him as a condition, precedent to the grant of this ferry, to unite with us in an application to the Legislature, to per-

mit us to tax him at his place of business for all these benefits, he tells us we are unjust, illiberal, or an up-town speculator! I do not think it worth while to vindicate myself from this latter appellation; the property in which I may be supposed to have any interest, was acquired for the most part many years ago, and was not acquired with any view to speculation. I hold the speculators, however, in great favor; they have been to this city what Augustus was to Rome—they found it built of Dutch bricks, and they have left it of granite and marble. If any speculators are to be favored, they are, in my judgment, the speculators of New York—and not the speculators of Brooklyn, those who are within our jurisdiction and liable to our taxation.

The gentleman from Brooklyn talks about injustice and monopoly; there is no injustice, there is no monopoly. The right of the Fulton Ferry was a privilege granted to the man whose name it bears; it was for a valuable consideration—it was for an invention which has made his own name and that of his countrymen, illustrious in the annals of mankind; and although the necessities of the communities, and the inventions of lawyers in other states contrived to deprive him of the property in his own invention, the state of New York and the city of New York, true to her ancient faith and honor, never consented by any act of theirs to such a subterfuge. (I am content, Mr. Chairman, as soon as the leases which have been granted shall have expired, to make them free as the air; I would derive from them no revenue except a bare sufficiency for their public superintendence, under the authority of the Common Council, for the public benefit. I am in this respect, in its largest sense, an anti-monopolist, if monopoly it may be called; I would annihilate at once the Fulton Ferry Company, if it could be done without injustice.

The gentleman from the third ward has, in the course of his debate, spoken of *ad captandum* arguments; he wishes to accommodate the poor; to enable the poor to live at Brooklyn; to inhale the pure air, and to drink the pure water of that region. The poor will choose to live where it is most to their advantage: but, fortunately for us, we have no poor but those who are by disease or misfortune unable to work: and they are, from the necessity of the case, and the humane policy of our laws, compelled to be supported by the labor of others. The poor will not choose to live at Brooklyn;—the poor-house of Brooklyn is New York. That portion of our community which earns its daily bread by the sweat of its brow, lives and will continue to live upon this island, and gathers its nourishment from the commerce that feeds us all—and to which we all without reluctance contribute.

I regret, Mr. Chairman, to have been compelled to debate this question—as I had not supposed that any of the points would have been discussed at this time which form the element of the gentleman's argument. I could have desired that gentleman learned in the law, members of this Common Council, might have been found who would have sustained and vindicated their rights more ably than I can do. I did not anticipate this discussion, or I would have endeavoured to have sustained with more knowledge and more ability, what I consider the rights of this Corporation.

I have not the folly or the vanity to suppose that any argument of mine will have changed in the slightest degree the vote or opinion of any member of this Board, any more than I am disposed to admit that any thing which has fallen from the gentleman will tend to change my own opinion. His arguments have been upon general principles, upon which I am not disposed to disagree with him; but the case under discussion does not come within the scope of his general principles. When he shall demonstrate to me that this South Ferry is called for by any great public necessity, either of New York or of Brooklyn, and is not for the benefit of a few individuals of the first ward, and the neighboring proprietors at Patchen's dock, I may be disposed to view the question with a different temper.

As the question now stands, and as the same is now presented to the Common Council, it is one which in the form of a *petition* invites to the discussion of the right of the Corporation to grant or withhold it; appealing from its jurisdiction to the Legislature, and in the last resort, to Congress; sustained by no public necessity or public convenience; inviting the termination of the Jamaica railroad to that point of the city already embarrassed by a superabundant population; and it is upon this, as well as upon every principle of right and of expediency, that I am reluctantly compelled to vote against it.

MR. TALLMADGE, (*who had been necessarily detained from his seat during most of the discussion*), said, I hope the importance of this subject will be an apology for the few remarks which I am about to offer. I say the importance of it, because on every occasion on which we have met, when the discussion of this question was anticipated, we have had a very crowded room, and apparently an anxious audience; and at no time has the subject been presented before us, but there has been manifested a strong excitement of feeling, showing that many of our number take a deep interest in the result. With a very few exceptions, I do not know what are the

feelings of the members of this Board in respect to the matter in discussion ; but I do know that there are facts, circumstances, and arguments to be adduced in favor of this petition, which, if gentlemen would but boldly and calmly examine them, must produce a result favorable to the prayer of these petitioners. And, before entering into the merits of this subject, permit me to remark, that no one in this Board can stand more disinterested in the issue than myself. Neither I nor any of my friends or connections have any interest in it. Until the question was presented here, I did not know the names of the petitioners ; much less had I any personal interest in their petition. Thank heaven, this matter is not political in its character ; and whilst I act here singly in my legislative capacity, I desire to impute to others the same purity of motive by which I myself profess to be guided. I can not, I do not believe that any gentleman in this Board is actuated by any other than the purest motive ; to wit, the public good.

As I have understood that a petition embracing the same object has been before this Board for a series of years, a number of persons from time to time have petitioned for a new ferry, south of the present Fulton Ferry. The petition has been renewed from time to time, and never yet disposed of ; although I believe that the committees to whom they have been referred have invariably reported in its favor ? How, then, does it happen that these committees have always come to the conclusion that it is good policy, and for the public benefit, that another ferry should be established ? The very fact that all the committees have uniformly made such reports, ought surely to excite some little doubt in the minds of persons who are now opposed to its establishment. It seems to me, sir, that this question resolves itself simply into a question of policy, in regard to that which will most promote the good of the city of New York. And here I would remark, that I have not risen in my place as the advocate of the city of Brooklyn ; however friendly I may be to the object of this petition, I concur entirely with the gentleman from the fifteenth, that the first consideration should be, what is most conducive to the good of the city of New York. From this point, then, let us start ; for, if I am not satisfied at the outset that the establishment of such a ferry will not be productive of good to this city, the Board may be assured I never will vote in its favor. What, then, is the object to be attained by the establishment of this ferry ? It is to be south of the Fulton Ferry, and will be the most southerly ferry from the city of Brooklyn, and is to run from Whitehall slip to the foot of Atlantic street, in Brooklyn. Now,

let me first inquire whether the Whitehall property has been productive to this Corporation? What have you realized from it? If my information is correct, you have realized about the sum of one hundred and fifty dollars per annum; and I am glad that the sum is not greater. I admire the principle which has been adopted by the Common Council, that your wharves and piers should be given almost gratuitously for the purposes of commerce. We are realizing only from one to one and a half per cent per annum from this property; and when you inquire of the Comptroller why a greater sum is not *required*, and this species of property rendered more productive, he gives you a most satisfactory reason: he says that you encourage commerce, and promote the best interests of this city, by demanding small dockage fees; and I hope the Corporation will extend this principle still further, and make their property a means of contributing to the public good, by aiding the enterprize of private individuals. But when an application is made for a specific purpose, and you are offered a consideration which will reduce the amount of your taxation, by adding to your treasury receipts, shall we not pay regard to it? What is the offer of these petitioners? They say, we will pay three thousand dollars, or three thousand five hundred dollars to the Fulton Ferry Company, until the expiration of their lease, which takes place in about four years; and at the same time, we will pay the sum of one thousand dollars to the Corporation, annually; and that at the expiration of the Fulton lease, the Corporation will realize in addition the sum proposed to be annually paid to the Fulton Ferry Company. Is this no consideration? Is not this calculated to reduce the amount of our taxation? I hope that the time will soon come when the six thousand vacant lots of land on this island, belonging to the city, will be so appropriated for the public good, as to supersede the necessity of taxation; and I am well satisfied that it may be so, and that the whole amount of your city expenses may be paid by your own property. When will you commence? or will you suffer all your property still to remain idle and unavailable? This is one consideration in favor of the ferry. But there are other considerations.—You have now the Fulton, Catharine and Walnut street ferries. In reference to the Fulton Ferry, I would ask, have you ever passed over it? Did you find it convenient to cross? or, on the other hand, have you not at times found it almost impossible to do so? and in making these allusions, I have no design to censure the Fulton Ferry Company. I am not here for that purpose. The truth is, that the demand upon the boats is so great, that it is impossible for them conve-

niently to accommodate the number of passengers. There are three boats running—but, notwithstanding this, passengers are frequently compelled to wait a long time before they can cross the water. What I now speak is in the knowledge of all—for all who hear me are as well acquainted with the fact as myself.

But are there not other advantages to be derived from the establishing of this ferry? Within the last three, four or five years the population of Brooklyn has been increasing, as the gentleman of the third ward has stated, to an unexpected amount; the city has extended itself to the south and the east—and its population from the number of two thousand, has increased to that of twenty thousand. The property south of Brooklyn, and even below Fort Hamilton, to the south, has been heretofore unproductive; that is to say, it has not been used for those purposes for which it can now be used, in case this ferry is granted. The Board has received the petition of the Gowanus Bridge Company, praying for this ferry.—They are forming a turnpike road from Atlantic street to Bath, and running through a valuable section of country, peculiarly well adapted to supply your markets with vegetables. You have heard that this road considerably abridges the distance from Fort Hamilton, Bath, and the adjacent country, to New-York, thus accommodating the public; and this is an accommodation to the city of New-York—and why? We have all felt the inconvenience attending the introduction of our marketing. Some of it is brought in small boats across the rivers—some of it comes from the county of Westchester, and some through the city of Brooklyn. Every avenue that you can open is assuredly a benefit to your city. I ask every gentleman who has paid any attention to this subject, if he does not believe that the price of our marketing would be greatly diminished by the extension of the facilities for bringing it? And is not this a vastly important consideration? Again, by practice, and I will not say by law, the charges of passage between this city and Brooklyn are exorbitant, both for foot-passengers, horses and carriages, of all kinds. The question has been asked whether the Company are entitled to the exorbitant ferriage demanded by them, and the question has never been disposed of. I believe a demand is made of four cents upon every foot-passenger, and of fifty cents upon every carriage that crosses the ferry. It has been said that, in making these charges, the Company are guilty of a breach of law, and liable for its consequences. But who will undertake to call them to account? Look at the exhibition which has been made by the gentleman from the third ward as to the daily

amount received by this Company, and then say whether it is not important that these rates of ferriage should be reduced. What would be the effect of establishing this ferry? If we grant to these petitioners the privilege asked, you can restrict them in the amount of ferriage. You have done so with the ferry at Corlaer's Hook, and you could have done so with every ferry you have granted since that, and you may do so now. If you will reduce the ferriage to two cents for a foot passenger, and two shillings for a carriage, we shall have the prices of all our ferries reduced correspondingly. It will have the same effect here as competition has upon freight to foreign countries or upon internal trade: restrict them to a reasonable ferriage, and the other ferries as a consequence must come down to the same level. Is not this enough to convince the Corporation of New York, of the policy of granting this petition? There is another consideration: It is a fact well known to every member of this Board, that the Jamaica railroad is to terminate at the foot of Atlantic street, in Brooklyn. Now, whilst we are not legislating for King's county, Long Island, or Brooklyn, let me ask you if all these places and the circumjacent country are not tributary to New York, and does not their prosperity beneficially operate upon New York, from whence do they derive all their supplies?—Not only that, but we find advertisements in the newspapers of the contemplated connection of this road with the Boston and Stonington railroad. Do you believe this can be accomplished? Or, I should rather ask, is there any object more feasible? And if it is accomplished, do you wish passengers arriving by this communication from the eastward to be carted from the foot of Atlantic street to the Fulton Ferry, to enable them to enter the city of New York, because you are too niggardly to grant them proper accommodation to cross at the termination of the railroad? It is asked, why not terminate the railroad at Williamsburg Ferry? I know that Atlantic street has been laid out 100 feet for the purpose of accommodating this railroad; I know that there is a gentle ascent of from fifteen to twenty rods from the termination of the contemplated ferry at Atlantic street, to the level of this avenue; it is an easy ascent, and thence a perfect level to its intersection with the Jamaica turnpike, thereby avoiding the long ascent at Brooklyn; and I presume that the commissioners or surveyors of this avenue have preferred it to a termination at Williamsburg.

From whence is derived the wealth which we see exhibited in this city? Is it from our mechanical industry? Or, if I may use the expression, city productiveness? Your

spring and your fall goods produce it from the country, and let us remember we derive it all from the country. Very little of any thing is manufactured here ; this is the grand depot of trade from whence the country is supplied, and we get a commission for transacting the business, which constitutes our profit. Whence does your flour come ? Does it not come by means of your canals, from the interior of your state ? and it is shipped by you, and this staple is paid for by the return of sales. Who derives the benefit arising from these transactions ? The people of the city of New York. Do not your goods from Europe come into this market ? and do not the merchants of your city transmit them to every section of your country, and receive in return the products of that country ? Let us not, then, affect to feel ourselves so perfectly independent of the country, but adopt a liberal course towards it. Let us open all our avenues of communication with the country—let us make them as free as air, and your city will increase in importance and wealth proportionably. Enough has been said, I trust, to satisfy every gentleman, and indeed his own experience must have told him of the necessity of providing another ferry. And what is the objection ? When the application was originally made, the objection was, “ oh ! you will interfere with the vested rights of the Fulton Ferry Company.” There was no other objection ; and this was sounded again and again, in the ears of the Corporation, as an insuperable difficulty. That question, I believe, is now disposed of, by an arrangement with the Fulton Ferry Company ; and whether it is or not, I, for one, shall give my vote, in defiance of the lease of the Fulton Ferry Company. I do not believe that this Corporation can vest unlimited power in any company. If the Corporation can give the exclusive right to a ferry for nineteen years, why not give it for a hundred ? Why not give such a lease as to exclude all other ferry accommodations from this place to Hurlgate ? I repeat, I do not believe that such powers are vested in the Common Council of this city.

What then remains ? Why, the first difficulty that presents itself is, that by granting this ferry, we drain the city and county of New York of its population. And for what ? Men are generally governed by some motives in their conduct. What, then, is the motive that would induce our citizens to remove to Brooklyn ? The first answer is, that there a lot of land is cheaper than it is in New York. I ask is it so ? Is there any real inducement upon that score ?—Do you procure lots at a cheaper rate there than you do upon your avenues, at a corresponding distance from this Hall ? Land in Brooklyn has risen to a height which makes it al-

most destructive to purchase, in consequence of the rage of speculation. What, then, is the inducement to persons to settle in Brooklyn? Why, it is to avoid taxation. This is the argument that is urged most frequently, and has no foundation in fact. Examine this for one moment. Your taxes in this city are about 57 to 60 cents on \$100, and the city is possessed of property to the amount of near six millions of dollars; and what is the situation of the city of Brooklyn? Does its Corporation own one rod of ground? Have they one lot except their market-ground and poor-house? They have no jurisdiction over the water; we claim it all—but they have purchased a site for a City Hall, for which, and the contemplated building, they have but lately contracted a debt of about \$150,000. Moreover, for every street they open, and every improvement they make, they pay a portion of the expense from the city treasury as in this city, and assess it upon the property benefited. In addition to this, they have to pay for their watching, lighting, and other contingent expenses, which appertain to New York. I ask the gentlemen, if taxation there will not be greater in eighteen months from this period in the city of Brooklyn, with an empty treasury, than it is at present in the city of New York? I put it to persons of common understanding, if, whilst the people of Brooklyn are incurring debts like these, there will be any thing gained by a residence there? It is but a short time since that a judgment was issued against their Corporation for the non-payment of a debt of inconsiderable amount, and a tax was levied for its liquidation.—Nothing, therefore, is to be gained by a removal to Brooklyn, in respect to avoiding taxation. The position is illusory; and let men desirous of possessing property consider well before they remove into a region where their taxes will become greater than they are subjected to in this city.

What other motives, then, are there which will induce a removal to Brooklyn? Why, if any gentleman will take the trouble to walk through Atlantic street, he will discover that there will not be three *thousand* lots *immediately* affected by this ferry—I mean, assuming a line to be drawn between Atlantic street and the Fulton Ferry; extend the line till you intersect Fulton street, and you cannot make the number of unoccupied lots which would be affected by this ferry more. There is scarcely a person in that vicinity who occupies less than four lots; but, suppose it were three lots, this would accommodate 1000 families. Now, even supposing that 1000 families were to remove at once from our city, what effect would it have upon our population? about as much as to throw a single stone into the East river, and call it hell-gate. The

increase of a single quarter of a year of your population would not be absorbed by such a removal ; it is an idle tale. But who are the class of persons that are removing to Brooklyn ? Why, only your capitalists who do business in Pearl street, and who are going over there to avoid taxation, is the reply ; thus causing a heavy loss to the treasury of New York. Well, why oppose their removal ? Is it not as convenient to go through Broadway in an omnibus, as it is to pass over to Brooklyn, to occupy lands there ? Is any thing gained on the score of policy ? Suppose they go, and pay their taxes there, what of that ? Why, say the gentlemen, we should apply for a law requiring them to pay their taxes where their capital is invested or employed.—What would be the effect of such a law upon the city and county of New York, if application were made to the Legislature for an act of this sort ? If such an act was passed, it must be general in its character ; it could not be partial or local. We then ask a direct tax upon capital invested, and to be levied in the place where it is invested. To judge of the effect of such a law, let me ask what is the amount of capital invested in the stock of other states, such as Ohio, Illinois, Pennsylvania and other states, but owned by persons resident in the city and county of New York ? How much is invested in manufactures without the city, by persons who reside here ? How much in bond and mortgage ? And if you procure the passage of this law, are you not depriving the treasury of New York of the benefits of taxation upon the amount of from thirty to fifty millions of dollars ? Is it policy to ask for such a law ?—But, it is said, these Brooklyn gentlemen are lighted, watched and protected by us without aiding in our burthen. Is this so ? From what source are your taxes derived ? By reference to the Comptroller's Report, for the year 1833, it will be found that the first ward pays nearly one-half of the tax on personal property in this city ; and that the first, second and third wards pay about one half of the taxes of your whole real estate. Why ? Because your property rents so advantageously in those wards—because, if business is profitable, men must have places in which to transact their business. No matter where they reside, they are renting our stores in Pearl street, and other parts of the city. They pay exorbitant rents for their places of business, and your taxes are in proportion, and founded upon the annual value of the property. Within a few days past, one building in Wall street has sold for sixty five thousand dollars ; one building on the corner of Pine and Wall, has let for six thousand five hundred dollars per annum ; buildings on Cedar street are rented for from two thousand five hundred to three thousand

dollars, and on Liberty street from one thousand eight hundred dollars, upwards. There is a concentration of capital in this section of the city, where it must be employed ; and your assessments, as well as taxation, are guided and governed by these very rents. I care not where persons reside, when they pay taxes of this description here. It operates directly to the benefit of the treasury, that they employ their capital here, and thereby increase the value of our real estate.

I know the time is failing us, and I must, by this time, have wearied the patience of the Board. I will, therefore, condense the few observations I have yet to make as much as possible. Is there nothing due to these petitioners ? is there nothing due to the lower section of the city ? Who are the petitioners ? There are one thousand, or one thousand two hundred, from the lower section of our city, who ask you to grant this ferry. Is so numerous and respectable a body of your citizens to be entirely disregarded ? Why should it be so ? Have you found a want of liberality in the lower section of the city in disbursing the public moneys for improvements in the upper section ? When have you asked an appropriation for that section, that it has not been granted ?—What course of proceeding has been adopted in regard to it since we have had the honor of seats in this Board ? For Tompkin's Square, in the eleventh ward, you asked the sum of \$15,000 from the treasury, and we gave it ; and for the purchase of the land constituting that square, you came to the Board for \$63,000, to be assessed on the adjacent property ; you had it. What more ? When an application was made for an appropriation for Union Place, did we not freely make it ? Was there any reluctance manifested ?—When the sum of nearly \$200,000 was asked for the third avenue, was it refused ? Oh ! but it is said " that was for public benefit ;" true, but it was more especially for the benefit of individuals holding real estate upon that avenue. Where have your streets been opened ? Every evening applications of this description are made and granted ; and when you are asked where are the improvements to be made, the answer is, in the twelfth ward, in the upper section of the city. It has been remarked, that although the Common Council make the appropriation, they are ultimately repaid by the increased value of the property subject to taxation—but the Corporation assumes the debt, with all its responsibility. If the property increases in value, so do the city expenses, in lighting and watching the same property, increase proportionably. Let there, then, be a reciprocity in granting these accommodations ; and I will go further and

say, that when the gentleman from fifteenth shall ask an appropriation for his ward, which is equally reasonable, I will go heart and hand in favor of it. I know that the increased value will not only indemnify the Corporation, but will do vastly more. But, then, permit me to ask, whilst the gentlemen of the first, second and third wards are merely asking for a ferry, why do gentlemen rise and say that it would be injustice to grant it? Where is the injustice? Why, you will depopulate your city. Is nothing due to the lower section? I represent an upper ward. I have no interest in this ferry—the little real estate I possess is above twelfth street, and I never was able to see that the grant of this ferry could affect property in the upper part of our city unfavorably. With the spirit of liberality and justice, which has always been manifested in this and the other Board, in respect to public improvements, since I have had the honor of a seat here, I did suppose that all would concur in granting the ferry at once. Believing the petition to be a reasonable one, I have sought to discover what real objections could be alleged against it. I could see none; I see none now.—It appears to me, that the establishment of the ferry will directly enhance the amount of your available property; and if the lower section of your city is too crowded, why not give it vent? why not let gentlemen go over to live in Brooklyn, and transact their business in the lower part of this city? Your treasury is benefited, at all events. A few years ago the Corporation were asked for the Catharine Ferry, and it was granted. Did any one object to it on the ground that our population would leave us, and go away to Brooklyn? And has not the opening of a communication to that section of Brooklyn been an advantage to this city? Has Corlaer's Hook been drained of its population, a portion of which, I should think, might well be spared? Has not your city been benefited by the Walnut street Ferry, running near the Navy Yard? Do not many of your citizens labor on the other side? and is not this a positive advantage? You have granted a ferry at Williamsburg and Hellgate; you have given all the benefit of the ferry at Hellgate to the lessees of the ferry, and I voted for it, because it offered additional facilities of communication to the city and county of New York. At the very last meeting of the Board, an application was before us for the forming a battery or promenade in the northeast section of our city. With what spirit was the application received? The committee reported favorably upon it, and I voted for it, because I was desirous of aiding public improvement by every means in our power. And shall we refuse this poor pittance

to the lower section? It appears to me, that this is a question entirely between supposed private up-town interest and public good.

One moment more, and I have finished. What will be the consequence of your refusal to grant this ferry? At this very hour there is a notice in the public journals of an intended application to the legislature, by the city of Brooklyn, for the very thing which is asked at your hands.

It is said by the gentleman from the fifteenth, that the power over these ferries is vested absolutely in the Corporation, and that the Legislature cannot take it away. Upon this point, he and I are directly at issue; I say that it can be taken away by legislative enactments. If the gentleman will examine the law as settled upon the subject of Corporations, he will find that, with the exception of those which are eleemosynary in their character, or which vest a private right, the Legislature has entire control over them. What, then, is the right vested in the Corporation of New York? They had the control over land and water from this to Jersey city and the city of Brooklyn. Does the gentleman intend to argue from this, that we can exercise control over the vessels which come into our harbour, except for the purposes of quarantine? Surely not! and I cite the case of the Dartmouth College, which has been referred to before, and in which opinions of the learned Judges Marshall, Washington, and Story, have been delivered; so that the point cannot admit of a dispute. Does the gentleman intend to say that the charter of this Corporation is paramount to the constitution of the state of New York? In the case of the Dartmouth College, reported in 4th Wheaton, p. 518, the Supreme Court took the distinction, that in all cases of chartered rights, except those of an eleemosynary character, or of property held for the benefit of private individuals, the constitution or law of the state had the entire control.

Mr. BRUEN explained that the position he had taken was, that it was not competent for the Legislature to divest the Corporation of any of its property. It would be a violation of the eternal principle upon which all human legislation was professed to be founded. He contended that the Legislature had no right of interference, and that the Corporation held their City Hall, and all their other property, entirely independent of it.

Mr. TALLMADGE, [in continuation.] This question as to the constitutional rights, is one of great importance. I contend upon the decision of the Supreme Court, that there is nothing in the charter of this Corporation in opposition to the law or constitution of this state, which can stand for a moment.

Does not, then, the law of your state exercise an entire control? Is it not paramount?

Mr. BRUEN said it was not. Had the Legislature a right to divest the Corporation of their common lands? Or, of that very piece of property on which they then stood? Or, of the ferries from which they derived their revenues? He was astonished to hear such law promulgated any where. If it was law, it was entirely at variance with every principle of justice, and with the elements of common sense.

Mr. TALLMADGE, [in continuation.] The Legislature have not a right to divest us of our common lands, because they have recognized the right as vested in the Corporation of the city, by a law of the Legislature of this state.

So, also, by the charter granted to the city of New York, the Corporation have an exclusive control over the public streets of the city, and yet, by a law of the Legislature, this Corporation are restricted and controlled in the exercise of this power, and we cannot open, or even widen or enlarge a street, except by the sanction of state authority. The exterior line of the city is prescribed by legislative enactment, and while we have a certain political jurisdiction across the surrounding waters, we cannot enlarge our city boundaries.

And why is this position not correct? When the constitution of the state was adopted, had you not your delegates from New York representing you? And did not your representatives acquiesce in its provisions? They adopted our constitution; every right in opposition to that constitution has been absolutely surrendered, and we act entirely on the same constitution as the state of New York. I refer again to the case of the Dartmouth College. In this case, the question arose as to the soundness of a legislative enactment bearing upon this institution. The Supreme Court of New Hampshire decided, that the officers of that institution were controlled and bound by the law of the state; and the case went before the Supreme Court of the United States. In that very case Chief Justice Marshall gave his opinion: and he there lays down the broad position, that whatever property is given for public purposes is subject to the law of the state; and where it is given for eleemosynary or private purposes, the law has no control over it, so as to impair the rights conferred. It then becomes, in the technical language of the law, a vested right, and is paramount to the constitution and the law. As to its uncontrollable character in the case alluded to above, Chief Justice Marshall says, "if the act of incorporation be a grant of political power, if it create a civil institution to be employed in the administration of

the government, &c., the Legislature of a state may act according to its own judgment, unrestrained by any limitation of its power imposed by the constitution of the United States;" and he draws the distinction between a public grant made for political purposes, and a private eleemosynary institution.

The same distinction was sustained by the whole court in that leading case.

The powers vested in the Corporation are entirely of a political character, and can be modified, restrained, or controlled by the Legislature.

If the position is doubted, let me ask, who has controlled the election of your Mayor, and who has vested in you the power to appoint your special justices, and other subordinate officers, while the Legislature reserve to themselves the appointment of the judges of your Common Pleas, and various other subordinate officers. In the exercise of this power over your municipal affairs, you have acquiesced and recognized their supremacy.

In refusing this petition, you undertake to control the free passage across an arm of the sea, over which the inhabitants of these United States have as good a right to pass as the citizens of New York; and I would inquire, whether, if you can prohibit the inhabitants of Long Island from crossing at the proposed ferry, can you not equally prevent their crossing at any other, and thus interdict them from an ingress to your city?

The principle we contend for is, that you are vested with certain political powers, which you are to exercise for the *public good*, that is, the *general good*, and when that cardinal principle is forgotten in your legislation, the power from whence your authority emanates will assume the control, pronounce your acts an unauthorized assumption, and make your supposed private interest yield to the public good.

What authority does your charter-vest in you? To exercise its rights and duties for the public good. I merely mention this, because we may differ with the Legislature as to the requirements of public good; but if the Legislature believe that public good calls for this ferry, and we refuse to grant it, they have the power to do so. And then you will have no control over its finances, nor the amount of its ferriages. Let the Legislature pass a law authorizing the establishment of a ferry south of Fulton street; let the parties to whom it is granted take a private dock, and you cannot interfere with it; for your ordinances are not paramount to the law. What would be the consequence? Persons might apply for a ferry from every dock in the city. And

I hope if it is wanted that it will be granted. Your revenues will be dried up that you receive from that source, and persons will get that for nothing for which you would otherwise receive about fourteen thousand dollars. Is this no consideration? Are we to throw away our public moneys? Why, there has been an excitement raised about a small pittance which we have given to our old revolutionary soldiers, in the shape of a new-year's gift. There would be just cause of complaint, if we threw away our money in the manner I have described. I understand that this very evening, before I was in my place, there has been a petition presented for a ferry from the foot of Amos street to the Jersey shore. Well, if we need it, grant it—and as it proposes to go from the vicinity of the ward which I represent, it may sensibly affect its population, for they may flee to the mountains of Jersey. And will you say that this would drain our city of its population?

The whole question then, as I conceive, rests upon a point of expediency. Is it expedient to grant or reject this petition? And I ask my friends at this Board to look at the matter in that light. If you want facilities at the North, let your constituents ask for them; and their applications, when reasonable, shall never be discarded. If the grant of this ferry were improper—if I could believe that it would operate in any way to the detriment of our city, I would be among the first to oppose it. If not, then I say grant it: throw open all your avenues, rivers, and roads; if ten ferries, instead of one, are asked for, and your population and business require them, give them at once; afford every facility for a free and easy communication with this city. We shall then have done our duty to the country, and to our constituents.

After some desultory consultation on a point of order, and after two or three motions for adjournment had been made and lost:—

Mr. BRUEN moved that the Committee be discharged from the further consideration of the subject.

Mr. JOHNSON said that a Committee of the whole house could not discharge itself.

Mr. DYCKMAN called for the question on the final passage of the report.

Mr. JOHNSON said that there were several resolutions, and he would propose to take the question on each.

Mr. DYCKMAN called for the final question.

Mr. SUYDAM, [Chairman,] said the question would be on the passage of the first resolution.

Mr. JOHNSON said that the Chairman of the Ferry Committee had accepted his first resolution, as an amendment of that contained in the report.

Mr. BRUEN called for the question upon the passage of the first resolution, which was in the following terms:

Resolved, That a ferry be established from Whitehall slip to the foot of Atlantic street, in Brooklyn, to be called the South Ferry, and that such part of the said Whitehall slip, and of the bulkhead fronting the same, as may be necessary for such ferry, be appropriated for that purpose, and designated by the Street Commissioner and Superintendent of wharves.

The question was accordingly taken, and the resolution was lost, 9 against 5.

Mr. BRUEN moved that the Committee of the whole rise, and report progress.

The motion was carried, and the Committee rose and reported.

Whereupon,

Mr. TALLMADGE moved to strike out the enacting clause.

The PRESIDENT, [Mr. BRUEN,] said that such as were in favor of accepting the report of the Committee of the whole, would rise.

Mr. JOHNSON moved to lay it on the table. He could see no reason for such precipitation. No opportunity had been given to the members, generally, to address the Board. If the subject was to be crammed down their throats in that way, he supposed they must swallow it, as they had been compelled to swallow many other things. But he thought that some little respect was due to the minority.

Mr. PURDY said he was astonished to hear gentlemen speak of having the subject crammed down their throats, as if it were a muffin, or a piece of beef-steak. The question had been before them all the summer and fall, and now it was winter. Were they to be attending for so long a time to a public question; holding extra meetings, without end—backing and filling—veering and hauling—and then to be told they had crammed the subject down gentlemen's throats! He had no objection to postpone the matter; but he did not like to be told that he crammed any thing down a man's throat.

Mr. BRUEN said that he could confidently appeal to the gentleman from the third ward in support of his assertion, that the subject had had a fair discussion throughout. He should be glad to have the question finally settled now; still if any gentleman wished to make any remarks, he, [Mr. Bruen,] should feel constrained to give him an opportunity.

Mr. JOHNSON bore testimony to the spirit of fairness and accommodation which the President had manifested, from the first presentation of the petition to this hour. But, he pro-

ceeded to say, he had not yet heard a single argument why the ferry should be refused.

The **PRESIDENT** called Mr. Johnson to order.

Mr. **PURDY** said that his argument against the ferry would be, that he should vote against it.

An adjournment was moved.

Mr. **DELAMATER** said that he felt unwell, and had no disposition to sit there half an hour longer, discussing unimportant points. It was his intention to have said something on the subject, but he had not yet had the opportunity. The gentleman from the third ward had said that no argument had been brought to show that this ferry ought *not* to be granted. He, [Mr. D.] certainly had heard nothing, as yet, to convince him that it ought *to be* granted.

On motion, the Board adjourned.

City and County of New York, ss.

JOHN B. JOHNSON, of the city of Brooklyn, county of King's and state of New York, being duly sworn, deposes and says, that he is a collector of taxes in the said city of Brooklyn, and that the following is a correct statement of the number of foot passengers, horses, coaches, wagons, stages, carts, &c. &c., which were transported to and from the city of New York, in the boats belonging to the "Fulton Ferry Company," plying between the city of New York, and the city, (late town,) of Brooklyn, and running from the foot of Fulton street, in New York, to the foot of Fulton street, in Brooklyn, on the following days, to wit : July 13th, and July 16th, in the year 1831—September 13th, October 3d, and December 24th, in the year 1834 :—

	July 13, 1831.	July 16, 1831.	Sept. 13, 1834.	Oct. 3, 1834.	Dec. 24, 1834.	Total for 5 days.
Pleasure wagons,	25	34	64	56	38	217
Coaches,	21	23	22	31	15	112
Gigs, Stanhopes, &c.	54	66	43	60	40	263
Saddle horses,	38	39	22	40	20	159
Sulkies,			3	19	11	33
Milk carts,	47	49	49	51	54	250
Loaded carts,	179	139	313	320	297	1,248
Empty carts,	122	108	138	147	145	660
Loaded wagons,	67	92	52	47	51	309
Empty wagons	58	82	27	30	44	241
Stages,	9	11	5	25	15	65
Hand carts,			7	5	6	18
Foot passengers, 5,098	5,905	7,988	8,251	7,494	34,736	

And this deponent further says, that in the above statement there is not included any of the *deck freight*, carried in the said boats, on said days, and that there were neither races nor trotting matches on said days, nor indeed any cause to induce an unusual number of persons to cross.— And this deponent further says, that the above statement is made from his own personal inspection of the passing on the said days, *and that to the best of his knowledge and belief the said statement is correct in every particular.*

Signed,

JOHN B. JOHNSON.

I certify the above to be a true copy of the original statement in my possession.

H. C. BEACH.

New York January 6, 1835.

Sworn before me this 6th day of January, 1835,

CHARLES GRAHAM, jun.

Commissioner of Deeds, &c., City and County of New York.

We have seen and perused the case relative to the lease of the old Brooklyn Ferry, given in December, one thousand eight hundred and fourteen, by the Corporation of the city of New York, to William Cutting and Robert Fulton, and the opinion of Henry W. Warner, Esquire, upon the same; and we are of opinion that the covenant not to grant, establish or permit any other ferry between the city of New York and Brooklyn, to the southward of the ferry at Catharine slip, restrains the lessors and their successors from granting, establishing or permitting any ferry to the southward of the ferry at Catharine slip, between the city of New York and the village of Brooklyn, as the same was at the time of the execution of the lease of the old Brooklyn Ferry to William Cutting and Robert Fulton, and that the lessors, or their successors, are not restrained by that covenant from establishing any other ferry from the city of New York, to any other part of the town of Brooklyn; but are at liberty, and have the right to grant or permit a ferry from the city of New York to any part of the town of Brooklyn, except the village of Brooklyn, where the old Brooklyn Ferry is established, as the said village was actually extended when the lease to Messrs. Cutting and Fulton, was granted.

JAMES KENT.

S. JONES.

Dated New York, Oct. 13th, 1825.

OPINION

Of CHANCELLOR KENT, in relation to a new South Ferry.

The Corporation of the City of New York, on the 24th January, in the year 1814, gave a lease of the ferry from Beekman slip to the old ferry at Brooklyn, to William Cutting and Robert Fulton, for twenty five years, at the annual rent of \$4,000 and to be increased during the last seven years to \$4,500, per annum ; the lessees engaged to run for the first seven years one steam-boat, and two steam-boats afterwards ; the words of the lease were of all the ferry, and right of ferriage, " from Beekman slip to the old ferry at Brooklyn, on the Island of Nassau, and from the said old ferry at Brooklyn to Beekman slip aforesaid." The Corporation on their part covenanted, " not to grant, establish, or permit any other ferry between the city of New York and Brooklyn, to the southward of the ferry at Catharine slip."

The question submitted for my opinion is, whether the Corporation of New York can lawfully, and consistently with the covenant in the lease aforesaid, and consistently with that lease, grant and permit another ferry between the city of New York, southward of the ferry at Catharine slip, and Nassau Island, *southward of the village of Brooklyn*, where the old Brooklyn Ferry mentioned in the lease is established, though such new ferry should go from the city of New York to the island of Nassau *in the town of Brooklyn*, and at, or adjoining the foot of Jaroleman street, and to a point near the residence of Mr. Pierpont.

This question was submitted to Mr. Jones (the present chancellor) and myself, in October last, and we were of opinion, that the Corporation of New York were not restrained by their covenant from granting a ferry from the city of New York to any part of the town of Brooklyn, except the village of Brooklyn, where the old Brooklyn Ferry was established, as the said village existed at the date of the lease.

I have been requested by the same party, at whose instance the former opinion was given, once more to review it, and if my mind had not changed, to add to the opinion, more fully than was done before, the reasons and authorities on which it might be founded.

I have no concern with the question, whether it be expedient for the Corporation of New York to establish another ferry between the city and Brooklyn ; my opinion will be confined to the proper province of counsel, and that is, whe-

ther or not it be *lawful* for the Corporation, and *consistent with their covenant* with Messrs. Cutting and Fulton, to establish another ferry.

I am aware that different opinions are entertained on the question submitted, and, therefore, I give my opinion under the influence of that delicacy and deference which are justly felt for the counsel, from whom I have the misfortune to differ.

I am entirely and perfectly satisfied in my own mind, that the Corporation are not restrained by their covenant from establishing another ferry at the place referred to, at the foot of Jaroleman street, though it be in the town of Brooklyn. The covenant had reference to the *village of Brooklyn at the old ferry*, and not to the legal town of Brooklyn as designated by statute. It had reference to the village of Brooklyn at the old ferry, as known and existing at the date of the lease, and could not reasonably have been applied to a new village, which was then unknown, and might thereafter arise at a different place in the same town.

The ferry granted by the lease, was the one to and from the *old ferry at Brooklyn*, and when the covenant afterwards, in the same lease, engaged not to grant any *other ferry* between New York and Brooklyn, it would naturally refer to Brooklyn as already located in the deed. It was the *place at the old ferry* that the parties had in view. We must construe one part of the instrument by another. The place to be protected from competition, was the *old ferry at Brooklyn*. It would lead to very great inconvenience, if not to very great absurdity, to suppose that the parties meant by the covenant to go aside of the object in view, and to restrict the Corporation from granting a ferry from Whitehall, for instance, to Red Hook, because the one is in the city of New York, and the other in the town of Brooklyn. It was very possible, that in the course of twenty-five years, a village might spring up in the south part of the town of Brooklyn, on the shore of the East River; and was it to be supposed, that the parties intended to compel all intercourse between the city and such new village to pass circuitously over the old ferry at Brooklyn? The parties used the word *Brooklyn* not technically, but according to common use and meaning. They spoke of Brooklyn in reference to the old ferry, and, therefore, they must have intended *Brooklyn as connected with the old ferry*, and that could have been none other than the *village of Brooklyn* at that place, as known and existing when the lease was granted.

The grant of an exclusive right of ferriage between two given points, would undoubtedly prevent the establishment

of another ferry at the same place, or so near, as to operate as a fraud upon the grantee, by destroying his custom. It is difficult, in all cases, to draw the exact line to which, on each side of the ferry, the exclusive right justly extends.— That extent must be governed by local circumstances.— Here the parties to the lease have, I think, defined the bounds of the exclusive privilege, by confining it to *Brooklyn*, where the old ferry was established. This was a known, an ancient, and a definite place for a ferry. It was the *old ferry establishment*, and it appears to me to be entirely without any color of right or justice, to charge the proposition to establish another ferry, say half a mile south of the village of Brooklyn, and entirely distinct from the village, and unconnected with it, as containing a fraud upon the rights of the lessees.

It would not appear to me, to be proper to say, that the construction of the covenant on the part of the Corporation was to be taken largely and strongly against them, and in favour of the grantees. I think the principle of construction in this case is directly otherwise; the Corporation of New York, when they made the lease, acted as *trustees of the public*. The monopoly contained in the lease ought rather to be taken *strictly* when the public convenience is in question, and I feel very well persuaded of the solidity of the policy of this principle, when applied to grants and covenants proceeding from a public trustee. It is to be observed, in the consideration of this covenant, that the lessees are not bound to erect any other ferry, from any other place, however strongly the public interest and convenience might require it. They are only to use and occupy the old ferry at Brooklyn, and upon their constructions they can bar all other intercourse between the city and shores of Nassau Island, south of the village of Brooklyn. Suppose the duration of the lease had been one hundred years, instead of twenty-five, and a new village, the rival of the village of Brooklyn, in population and business, should arise somewhere opposite the N. end of Nutter's Island, must all the intercourse to and from New York, go circuitously through the village of Brooklyn? The very proposition would be monstrous, and it shows the policy and equity of giving to the covenant a natural and easy construction, by confining it to the place where the lease was to operate. The exclusive right of ferry to and from the old ferry at Brooklyn, with a monopoly of the waters and landings at the *village* as known in common parlance, and as existing in point of fact when the lease was made, was a great and valuable privilege, and sufficiently *extensive* to destroy the imputation

of fraud to the establishment of a ferry at any other place, in the town of Brooklyn.

If it be considered that the covenant binds the corporation only as to the village of Brooklyn, as known and existing in 1814, I think it follows of course, that independent of the covenant, no other ferry, at any other place, not within the reach of the covenant, can be questioned or restrained. By taking a *covenant the lessees consented to the location and limitation of the privilege, as defined in the covenant*. The express covenant shows decisively the monopoly that was intended by the contract, and in my opinion, if it be a well-founded construction of the covenant, (as I am persuaded it is,) that the Corporation are only restricted from granting any other ferry, during the twenty five years, from the city south of Catharine slip to the village of Brooklyn, as known and understood at the time of the grant, then, I think it is very clear that the Corporation are at liberty in their discretion to erect a new ferry from New York to the town of Brooklyn, at any spot that may be said to be fairly beyond the limits of the village of Brooklyn.

JAMES KENT.

New York, March 30th, 1826.

My opinion has been desired upon the question whether the Legislature of New York can grant to individuals, or to a Corporation to be created for the purpose, the franchise of a ferry between New York and Brooklyn, to the south of the Fulton Ferry.

That the state Legislature have the power to grant to individuals, or to a Corporation, the franchise of maintaining a ferry at any given point, in respect to which their constitutional power has not been abridged by some prior grant, will not be disputed. The question above proposed to me, must, therefore, be answered in the affirmative, unless it shall be found that some such prior grant is in the way. Two such grants have been suggested to me as deserving attention in this case, viz.

1. The general power to license ferries, granted to the city of New York by the original and confirmatory charters of that city, the last of which provides that the Common Council shall have the sole power of establishing such, and so many ferries around Manhattan Island as they shall think fit; and empowers them to let or otherwise dispose thereof, and to receive the rents, fees and other advantages arising therefrom, to the use of the city. And

2. The lease executed on the 24th of January, 1814, by the Corporation of New York to the Fulton Ferry Company, for 26 years from the first of May, 1814; which lease contains a covenant that the Corporation will not, during the existence thereof, "grant, establish, or permit any other ferry *between the city of New York and Brooklyn to the southward of the present ferry at Catharine slip.*"

In order to enable me to consider how far either of these grants can restrict the power of the Legislature in the premises, the charter of New York, and a pamphlet on the subject of the proposed "New South Ferry," in which the situation of the Fulton Ferry is particularly mentioned, have been submitted to me. After mature reflection, I have come to the conclusion that neither the charter granted to the city Corporation, nor the lease granted by them to the Fulton Ferry Company, can interpose any valid objection to the power in question, in case the Legislature shall be of opinion that the public convenience requires it to be exercised.

The authority to establish ferries granted to the city by the charter, is a branch of the sovereign power, and like all the other legislative and administrative powers conferred on them, was granted to the Corporation "*for the good rule and government of the city,*" [charter of 1730, page 37.] and not as a subject of property. In this respect it is to be carefully distinguished from the express grant of the Old Ferry, contained in the first charter, and subsequently confirmed. The franchise of keeping up that ferry for ever, is granted to the Corporation as an incorporeal hereditament, to be held by them on the same tenure as if the same had been granted to an individual. They have a freehold property in it. But the general power to establish other ferries, is delegated to them as depositories in this respect of the prerogative of the government. For the purpose of exercising this prerogative, they were substituted in the place of the crown, and they are authorized and bound to exercise it for the general good, though the rents and profits are to go into the city treasury.

And though the charter declares that they shall have the *sole* power of establishing other ferries around Manhattan Island, yet in my opinion this only means that this power, as a delegated authority, should be possessed by them *to the exclusion of any other officer, tribunal, or public body.* I suppose that this power was subordinate to the right of the crown, and of the colonial assembly to establish ferries wherever they should think them required by the public convenience: and that it has at all times been subject to be controlled, modified or entirely abrogated by the the supreme

legislative power, without any other limitation than that all prior grants made by the Corporation in pursuance of the power, would remain valid, and be protected by the laws. The Corporation of the city and the state Legislature seem to have regarded the matter in this light, for we find in the general state law of 1813, relative to the city of New York, numerous provisions on the subject of ferries and ferriage between New York and Long Island, which fully recognize the general control of the Legislature over the whole subject. [2. R. L. 355 to 361.]

The lease executed to the Fulton Ferry Company, and all the covenants contained therein, which were authorized by the charter or state law, will impose the same obligation on the Legislature as if they had been contained in a special law enacted by that body. And as no good objection can be taken to the term for which the ferry at Beckman slip was granted to the Fulton Company, that grant will, therefore, be valid for twenty-five years; and the Legislature cannot create a new ferry at that place during that period. Nor can they establish a new ferry within the *just range* of the Fulton Ferry, and so near it as necessarily to take away a material part of its custom, without providing a just equivalent for the injury sustained. This is the general rule in respect to franchises of this nature; and I think that the question whether the Legislature can lawfully establish a new ferry at any given point south of Catharine slip, without an indemnity to the Fulton Ferry, must be decided by a sound application of this general rule, and not by the terms of the sweeping covenant inserted in the lease, and above quoted. I regard that covenant, so far as it goes beyond this general rule, as an attempt to abridge the legislative power of the Common Council, and to bind their successors in a matter and to an extent unauthorized by the charter; and I therefore consider it, (except to the extent of the general rule as I have stated it,) absolutely void. The Legislature may undoubtedly grant an exclusive right to maintain a ferry for any such period, and with any such limits as they may think proper; but the general delegation of authority contained in the charter of the city cannot be so construed as to confer on the Common Council this high prerogative.

I am not able to ascertain, from the papers submitted to me, the precise points on either side, between which the new ferry is desired to be established; and even if this matter were distinctly known to me, I should not feel myself competent to decide whether a ferry between them would so far infringe upon the legal rights of the Fulton Ferry as to entitle them to compensation. To decide upon such a ques-

tion, one should possess a very full knowledge of the localities, population, intercourse, and state of business, as they existed when the Fulton Ferry was established, and as they now exist; and even with that knowledge it would be difficult, and perhaps impossible to draw the line with precision, or in a manner that would be perfectly satisfactory even to my own mind. In general, however, I will add, that the just range of the Fulton Ferry must, in my judgment, be limited to the compact part of the main village of Brooklyn, as it existed in 1814.

Washington, Jan. 3d, 1834.

(Signed.)

B. F. BUTLER.

SUPERIOR COURT.

Joshua Sutton ads. Samuel Satterlee.

The plaintiff, Satterlee, is a measurer of grain, appointed under the act of the legislature of this state, entitled "An act regulating the measuring of grain in the city of New York," passed April 14th, 1832, and in this suit declared in an action of debt for the penalty of twenty five dollars, incurred by the defendant Sutton, under the 5th section, for measuring grain, and taking fee therefor, not being a measurer appointed under that act. The defendant pleaded the following facts, viz: That the charter of New York (under George II, January 15th, 1730,) constituted it a free city, and granted to the mayor, aldermen and commonalty, and their successors for ever, among other things, the office of measurer of grain, with "the fees, profits and perquisites" thereof, and all "fines, amercements and forfeitures concerning the same;" that on the 14th October, 1732, this charter was confirmed by the governor, council and assembly of the colony of New York; that ever since the Corporation have enjoyed the right and privilege of the office in question, and of appointing persons to fill the same, and have never relinquished such right, or consented to any diminution or alteration thereof; and lastly, that at the time of the act complained of, the defendant was a measurer of grain, duly appointed and commissioned by the Common Council, agreeably to their charter, and that in committing such act he was in the discharge of the duties of this office. To this plea the plaintiff put in his demurrer, (thereby admitting the facts, but denying them to be sufficient in law to bar his action,) which on argument before Assistant Justice Morrell was sustained, and judgment for \$25 debt and \$5.

87 costs, passed against the defendant, who removed the cause by certiorari into this court, where it was argued by Daniel B. Tallmadge, Esq. for Satterlee, the plaintiff in error, and Dudley Selden, Esq. for the defendant in error.

The point raised in this court was, whether the rights and powers granted in the charter of the city of New York could be annulled by an act of the Legislature.

On the part of the plaintiff in error it was contended, first, that the Legislature had no power to interfere with the charter of the city without its consent ; and, second, that the office in question being one from which the city had a right to derive a revenue by requiring fees, it was to be considered in the nature of property which could not be taken away.

It was answered, on the part of the defendant in error, that the power of the Legislature was unlimited, unless when restrained by the constitution of the United States ; and the only clause in either constitution, which in any way could be supposed to apply, was the clause prohibiting the passage of any law impairing the obligation of contracts :— That, although in some cases the grant by government of an act of incorporation was to be deemed a contract not liable to be changed by legislation, yet the charters included within this description were private corporations connected with the management of private property or rights, and not those created for the purpose of carrying on the operations of government ; that the incorporation or establishment of towns, counties and cities, being purely for political purposes, their charters were liable to be changed as public convenience might be deemed to require—that the constitutional provisions did not apply to such cases ; but, on the contrary, amendments and changes might be made in them although property might be affected thereby ; and the only (and a sufficient) security was to be found in the wisdom of the Legislature ; that fees could not be considered as property under a government like ours ; otherwise the conclusion must follow that offices might be created for the fees alone, and not for the services to be rendered,—a conclusion which would introduce the whole system of sinecures.

The court gave judgment for the defendant in error, thereby affirming the judgment in the court below.

*Extracts from Reports of Committees of the Common Council
of the city of New York, relative to the establishment of a
"South Ferry."*

EXTRACT FROM REPORT DATED DEC. 23, 1825.

The Ferry Committee, to whom was referred the petition of sundry freeholders and inhabitants of Brooklyn and New York, praying that an additional ferry may be established south of Fulton slip to a point near the residence of Mr. Pierpont, at Brooklyn, Report, That they have very fully deliberated on the subject committed to them, and which may naturally be divided into two questions, viz: First, whether it be expedient to establish a new ferry at the place desired by the petitioners; and if it is, then, secondly, whether the Common Council have power to establish such ferry, consistent with the grant heretofore made with the lessees of the Fulton slip Ferry. With respect to the first, it is obvious that the rapid increase of Brooklyn has already, or shortly may render an additional number of ferries very convenient to its inhabitants, by facilitating their intercourse with this city; but it is very doubtful whether that part of Brooklyn where it is proposed to locate a ferry *is at present sufficiently populated* to justify the measure, under any circumstances, &c. * * * As to the second point, several of the most distinguished jurists of the state have given opposite opinions, and, therefore, your Committee would fain avoid expressing their own opinion, did not their duty require it of them. * * * * If, then, it should *hereafter appear* that the public good requires another ferry to the southward of that at Fulton slip, *a fair equivalent* ought, in the opinion of your Committee, to be given to the proprietors of that ferry, before a new one is granted. * * * *

Your Committee, therefore, submit to the consideration of the Common Council the following resolution:

Resolved, That it is inexpedient to grant the prayer of the petition.

(Signed.)

W. P. RATHBONE,
E. W. KING,
ASA MANN.

The Report is endorsed, "Agreed. Notice of reconsideration by Mr. Bolton."

J. MORTON, *Clerk.*

IN COMMON COUNCIL,

JULY 31st 1826.

*The following is the Report of the Ferry Committee, made
31st July, 1826.*

The Ferry Committee, to whom was referred the petition of sundry persons for a new South Ferry to Long Island, respectfully

REPORT,

That they have heard the petitioners in support of their petition, and also the Fulton Ferry Company (who claim under their lease the exclusive right of ferriage from New York to the town of Brooklyn, South of Catharine slip,) in opposition thereto.

It appears that the Corporation, on the 24th of January, 1814, granted a lease to William Cutting and Robert Fulton, of the ferry from Beekman slip to the old ferry at Brooklyn, on the Island of Nassau, for the term of twenty-five years from the first day of May thereafter, they paying a rent *per annum* of \$4,000 for the first eighteen years, and \$4,500 for the remaining seven years; and covenanted that they would not, during the existence of the lease, grant, establish or permit, any other ferry between the said city of New York and Brooklyn, to the southward of the present ferry at Catharine slip.

The recital of the lease sets forth, "that the said William Cutting, by agreement between him and Robert Fulton and Robert R. Livingston, is possessed of the *exclusive right* to build or navigate a steam ferry-boat or boats across the East river, between *certain points* and places in the city of New York, and *certain points* and places on the island of Nassau; that the Corporation intend to establish a ferry from *Beekman slip*, in the said city of New York, to the *old ferry* at Brooklyn, on the island of Nassau, from and after the first day of May next, and thereafter to discontinue the present ferry at *Fly Market slip*, in the said city of New York."

The old ferry establishment, at the date of the lease, consisted of a number of *sail-boats* and barges, which rendered crossing at all times tedious; and with horses, carriages, cattle, &c., extremely troublesome; and the lease appears to have been granted in contemplation of substituting steam-boats in place of these. A steam-boat ferry was then deem-

ed "highly important to the community," and meriting particular patronage, as appears from the number of years for which the lease is given ; from a stipulation which it contains that the Corporation would apply to the Legislature for a law to increase the rate of ferriage : and from this covenant to prohibit the establishment of a rival ferry.

Your Committee believe, that at the time the lease was given, no one ever thought a ferry would be established across the East river, but to the village settlement of Brooklyn as it then did or might exist ; and that it was intended to give the lessees a monopoly of *that ferriage*, south of Catharine slip ; and the covenant in the lease was deemed to afford ample protection in the premises.

The word Brooklyn, in a vague sense, may be understood to denote the village settlement, the town, or the fire district.

The covenant must have been introduced to grant the lessees other rights and more extensive protection than they would possess without it. If so, what were their rights without any covenant ?

The Corporation have declared, in the recital of the lease, that they would discontinue the ferry from Fly Market slip to the old ferry at Brooklyn. So far they were bound not to set up any new ferry. A new ferry from the south of Fly Market to the old ferry at Brooklyn could not have been contemplated, on account of the increased length of such ferry and the rapidity of the current. They were fully protected at the old ferry landing at Brooklyn, then nearly the southern boundary of the village settlement, by the dock and stairs being included in their lease as a part of that for which they pay rent. The height of land known as Brooklyn Heights, and extending from the village settlement to Jaroleman street, would seem to forbid the idea of establishing a ferry landing any where between these points.

The leading object of the Corporation was, to establish a good steam-boat ferry, which they deemed it important to the community to effect. For this purpose they entered into this lease with Cutting and Fulton. In that lease they acknowledge Cutting's exclusive right to navigate steam ferry-boats across the East river, between certain points and places. It is admitted that the southern boundary of this exclusive right is Pierpont's mill. The Ferry Company, then, are protected by their exclusive right as far as Pierpont's mill, without any covenant, which shows conclusively that more than the village settlement was intended.

It is equally certain *that the whole town of Brooklyn is not included*. It never could have been thought necessary to

the protection of a ferry across the East river, that all ferries to the extreme boundary of the town of Brooklyn should be prohibited; that a ferry of six or seven miles in length should be forbid; and if not necessary, it could not have been intended.

By charter, the jurisdiction of the city of New York extends to Red Hook, which is about four miles from the South boundary of the town of Brooklyn. Is it reasonable to conclude that the Corporation intended to go beyond their jurisdiction, which might raise a question as to their powers, when it was entirely unnecessary to the accomplishment of their object?

At the date of the last lease, in 1814, Fulton and Livingston claimed, under the laws of this state, an exclusive right to the navigation of its waters by steam-boats. This right, (then esteemed valid,) is acknowledged in the lease, which recites that William Cutting had purchased from them their exclusive right between certain points and places on Nassau Island and New York, to navigate steam ferry boats.—Would the Corporation of that day, with a full knowledge of these facts, stipulate with Mr. Cutting, that from the southern termination of his purchased right to the extreme boundary of the town of Brooklyn, four miles beyond their jurisdiction, the right of navigating steam-boats, vested in Fulton and Livingston by the Legislature, should not be exercised by them, so as to approach the city of New York with any such boat, going as far as they could go to destroy a property granted by the state?

If, then, a steam-boat ferry was the inducement for granting this lease, and the right of steam navigation was a valuable property, held over different districts by different persons, with the extent of whose claims the Corporation were well acquainted, and it would be inconsistent with the rights of the respective parties to give the word *Brooklyn* the meaning contended for, it must be understood as referring to *the fire district* of the town of Brooklyn; and your Committee believe it was in reference to that district the word was used. If it should be objected that a grant beyond the privilege purchased by Mr. Cutting, was as much an act of injustice to Fulton and Livingston as if it went to the extent of the town, your Committee would refer to that principle of the common law which has been thus explained: "The owner of a ferry is obliged by law to provide and maintain facilities for accommodating the public, at all times, with prompt and convenient passage. In consideration of this duty, the same law provides him a recompense, by means of an exclusive toll, to be exacted from the persons

who constitute what is properly the custom of his ferry ; and of course it will protect him against any new establishment which is calculated to draw away *that custom* to his prejudice." Under this rule of law, a question might have arisen, had a new ferry been granted to Fulton and Livingston, where it could be established so as not to draw away the custom of the Ferry Company to their prejudice. That no question should arise on the subject, the Corporation undertook to settle it with Mr. Cutting, and have put the limitations at *the fire district* entirely within their jurisdiction.

In 1768, a law was passed erecting a part of the town of Brooklyn into a fire district. In 1788, the number of firemen was increased, and it was declared they should be called the Firemen of Brooklyn. In 1797, the inhabitants of this fire district were authorized to appoint not less than three, nor more than five freeholders, who should make such prudential rules and regulations as they might judge necessary to prevent fires by the burning of chimneys, &c., enact penalties, recover fines, and apply the same in providing and lighting lamps, &c. The same act establishes the Assize of Bread.

In the revised laws of 1801, the substance of these laws is brought into one, and printed under the title of *Villages* ; and the bounds of the district are called in the marginal notes, the "bounds of the *Village* of Brooklyn." In 1807, it was enacted, "that the limits of the fire district of the town of Brooklyn be extended from the Still-house along the East river, southwardly, to the public landing near the dwelling of Ralph Patchin ; thence eastwardly up the road leading from the said landing to its junction with Red Hook lane," &c. In the act of 1816, incorporating the Village of Brooklyn, it is declared, "that the section of the town of Brooklyn, commonly known by the name of the *fire district*, &c., shall continue to be known and distinguished by the name of the *Village* of Brooklyn." Here, then, is a district within the town of Brooklyn, performing all the functions of a *distinct community*. We see the Legislature, when speaking of the Firemen of this district, call them the "*Firemen of Brooklyn*." We see it designated as the "*Village of Brooklyn*," in the revised laws ; and we see the Legislature, in 1816, declaring, "it shall continue to be known and distinguished by the name of the "*Village of Brooklyn*." From all which, your Committee believe that the word *Brooklyn*, in the covenant of this lease, *has reference to the above described fire district*, and to no other place. Your Committee seeing no objection to granting a ferry south of that district, submit the following resolution :—

Resolved, That the Ferry Committee be authorized to receive proposals for the lease of a ferry to be established from slip to the public landing near the dwelling house of Ralph Patchin, in the town of Brooklyn, and report the same to this Board.

All which is respectfully submitted.

JOHN YATES CEBRA,
WILLIAM W. MOTT.

REPORT OF THE LAW COMMITTEE.

IN COMMON COUNCIL, Sept. 11th, 1826.

The *Law Committee*, to whom was referred the report of the Ferry Committee, relative to the establishment of another Ferry, south of the old ferry at Brooklyn, respectfully

REPORT,

That the right of the Corporation to establish ferries between this city and Nassau island, conferred upon them by the charter, and by a law of the state, is to be considered, *not as a monopoly for the purpose of revenue* to the city, but *as a delegated legislative authority*, to be used and exercised by them with the same regard to the convenience and interest of the public generally, *as the legislature themselves would exercise it.* The grant of a particular ferry is the grant of monopoly; but the right to locate and establish ferries without restriction, is *a very high public trust.*

This distinction the law committee consider as having a very important bearing, not only in the case now before the Board, but in every case of the establishment of a new ferry, or the renewal of the lease of an old one. *It is the public convenience alone which is the great object to be attained.* A revenue to the city, or profits to the lessee, are mere incidents. Whatever may be the policy of other governments in granting franchises and monopolies to enrich individuals or create revenues for incorporated associations, it is a policy which we believe is not, and ought not, to be adopted by our government.

In the establishment of a new ferry, *the interest and convenience of our neighbors on Long Island is to be regarded equally with that of our own citizens;* and more especially, as the people of Long Island, who pay a great proportion of the ferriage, are excluded by law from any participation of

revenue, and from all interference in the location and establishment of these ferries. Another rule which ought to be observed is, that the Corporation should be careful not to confer so great privileges on any one ferry, as to preclude themselves from granting another ferry at some proper place, when at some future time the public convenience may require it.

Two questions have arisen upon this application.

One, as to its *expediency*.

The other, as to the *right of the Corporation to grant it*.

The question of *expediency* we have not considered as referred to us, and we have not inquired into it.

On the second question the whole controversy appears to rest upon *the construction to be given to a covenant in the lease of the old ferry*—as follows: "That the said parties of the first part, and their successors, will not, during the existence of this lease, grant, establish, or permit any other ferry between the said city of New York and *Brooklyn*, to the southward of the present ferry at Catharine slip."

The applicants for the new ferry alledge, that the word *Brooklyn*, in that covenant, means the old ferry at Brooklyn, or at most that it cannot be construed to mean more than the extent of the *village of Brooklyn*, at the time the lease was executed.

The lessees of the old ferry alledge, that the word *Brooklyn* means *the whole township of Brooklyn*; and that no new ferry can be established south of Catharine slip Ferry, on the Brooklyn side, which is at the foot of Main street.

The following facts, it is believed, do not admit of dispute :—

The first application to establish a steam-boat ferry was made by Mr. Fulton, in 1812.

The ferry was then at the Fly Market.

It was agreed to by the Board, and in February, 1813, leases were prepared to run from Fly Market and Burling slip to Brooklyn.

In 1813, application was made to the Legislature for an increase of rates in favor of steam ferry-boats. It was not acted upon at that session, but a law passed to that effect, 4th of March, 1814.

After a variety of consultations, agreements, reports, resolutions, &c., it was concluded to establish the ferry at *Beekman slip*; and leases were executed accordingly, dated the 24th January, 1814, to take effect from the 1st May, and to continue for twenty-five years.

The steam-boat monopoly was then held by Messrs. Fulton and Livingston: and Mr. Cutting had obtained from

them a right to run a steam ferry boat between New York and Long Island, or from certain points on each side.

The boats then in use on the ferry were *sail-boats and barges*; team-boats were not then used, and it is believed were not known to the contracting parties.

The water boundary of the town of Brooklyn *extends southerly several miles below Red Hook*, the point to which, by the grant in the charter, the Corporation have a right to the land under water for the purpose of establishing ferries.

The *old ferry* landing at Brooklyn had been long established, and was very commonly designated by the term *Brooklyn only*.

The village of Brooklyn was also most usually designated by the term Brooklyn only.

The town of Brooklyn is seldom designated in that way.

The village of Brooklyn was incorporated in 1816, and the boundaries of the fire district were adopted as the boundaries of the village, and the act declares—"that it shall continue to be known and distinguished by the name of the village of Brooklyn."

The limits of the *fire district* were fixed in 1807.

The fire district had been established long before, and its limits extended from time to time, manifestly for the object of securing the assistance of those who lived within a convenient distance of the most settled parts of the village.

The Law Committee have not discovered that in the various propositions, reports, resolutions, &c., which were made during the negotiation for this lease, any mention whatever is made of this protecting covenant. No discussion or decision seems to have taken place as to its terms, nor does any thing appear upon the proceedings, which can explicitly fix the meaning of this important word *Brooklyn*, although great care and solicitude appears in settling the other matters deemed important in this lease. We are therefore left to discover its true meaning, taking into view the facts as they existed at the time, and the relative situations of the contracting parties.

It is insisted by the counsel for the lessees, that this is a protecting covenant for both sides of the ferry. On the New York side it certainly is so; the limits are defined, "to the southward of the present ferry at Catharine slip."

Now *Catharine slip* lies on the New York side; and on *that side*, the ferry is called the *Catharine slip Ferry*: but, on the Brooklyn side, it is called the *new ferry*, and its landing place is *not called Catharine slip*.

The covenant may therefore, admit of the following construction, viz: *that it is a protecting covenant on the New*

York side, and the word Brooklyn is introduced as descriptive of the ferry, or as meaning the *old ferry at Brooklyn only*.

The word Brooklyn certainly appears to be used in that sense in the first section of the law which increases the rates in favour of steam ferry-boats; and it is also used in that sense in the first covenant on the part of the lessees in the lease itself. This construction, however, is offered with great deference to the opinions of the learned counsel who have been respectively consulted by the parties; and without strongly insisting upon it, it is submitted to the consideration of the Board, because, in our view, it reconciles the use of the equivocal word *Brooklyn*, and corresponds more nearly than any other construction with what the lessees might with propriety have asked, and what this Board might with propriety have granted.

The word Brooklyn may also be construed to mean *the village of Brooklyn*. This is the construction adopted by the Ferry Committee in their report; and the subject is there discussed with great ingenuity and ability.

That construction, if adopted by the Board, is, in the opinion of the Law Committee, *perfectly safe to act upon*. But the Law Committee consider *the extent of the village at the time of executing the lease, not the extent to which it might afterwards grow, to be the proper construction*; for if it was not so, then just in proportion as the necessity for another ferry increased, the power of the Corporation to grant it at the most convenient and proper place would be diminished.

But the lessees insist that Brooklyn means the *township*, and that the restriction of the covenant extends to its *whole water boundary*, south of the Catharine slip Ferry.

Here, *two questions* present themselves.

First. Is it probable that a protecting covenant to the extent of *the whole southern water boundary of the town*, was asked for, or that it was then deemed essential by the lessees?

Second. *Would the Corporation have been justifiable in making this covenant, intending it to extend to the whole town?*

On the first question, *the extravagance of such a proposition* would have called forth much discussion and opposition, and something would have appeared relative to it, in some report of a Committee or resolution of the Board. Besides, suppose there had been no covenant; the lessees knew themselves protected from the establishment of a new ferry which might improperly interfere with them, by the common law right, and also by the justice and wisdom of this Com-

mon Council, without whose sanction no other ferry could be established, and who, in our opinion, are bound not to establish it unless public convenience requires it; and who are *equally bound by their duty to the public, not to surrender the right of establishing it at the proper place where the public do require it.* In addition, Messrs. Fulton and Cutting could have no fears as to a successful competition by boats of the old fashion, and with the old rates: they had the good will of the Corporation on their side, and, with their assistance, a confident expectation that the law would pass increasing the rates of ferriage in their favour; after which, all idea of competing with them would be ridiculous. They had the exclusive right of running *steam* ferry-boats and the team-boats were not then known. With all these advantages, it is not probable that they considered a protecting covenant of much, if of any importance to them, on the *Brooklyn side*. But if they had considered it of importance, they would have had the water limits definitely marked; some point, one hundred or two hundred rods south of the old ferry; Pierpont's dock; Red Hook; or (if it was so intended) the southern water limits of the town of Brooklyn, would have been inserted in plain, unequivocal terms, so as to have admitted of no dispute in future times. With the disposition of the Corporation so strongly in their favor at that time, no fair proposition for a protecting covenant would have been rejected. It is therefore inferred, that *all that was asked for was granted, and that nothing which is not expressed was intended to be granted.* And your Committee cannot admit that the parties did not understand this covenant, or that they differed in its construction, or that any inadvertency has crept into its phraseology. Our conclusion on this view of the subject is, *that probably no protection was deemed necessary, nor asked for, nor intended beyond the extent of the old ferry establishment on that side, and certainly not beyond the limits of the village, as it then existed.*

It has happened that since this lease was executed, team-boats have been used with success, and the steam-boat monopoly has vanished. These events were not in the contemplation of the contracting parties at that time. And if they had not since occurred, it is not probable that a new South Ferry would now be solicited to be carried on at the old rates, and with boats of the old fashion. *It is perhaps also this change of circumstances which has led the proprietors of the old ferry to a discovery of something in this covenant never known to the contracting parties, and never meant by them at the time of its execution—certainly never hinted at in a negotiation of nearly two years' continuance.*

But if Mr. Fulton had lived, and his monopoly continued, the application for another ferry would, before this time, have been made by him, or some assignee of his right.

The *other question*.—Would the Corporation have been justified in making this covenant, intending it to extend to the whole town?—involves important considerations.

That the Legislature may make an improvident grant of an exclusive privilege inconsistent with the public good, is a possible case; and when it occurs, it is liable to be set aside by a *quo warranto*. The same rule must be applicable to a grant made by a delegated legislative authority. For instance, a grant made by the Legislature, of *one ferry only* from this city to Long Island, to the exclusion of all other ferries, for a long term of years, would certainly be considered improvident, and liable to be vacated. It would not be less so, if granted by the Corporation, whatever revenue the city might derive from it. In the opinion of the committee, *a covenant to the extent claimed by the lessees, would have been a gross abuse of the authority delegated to the Corporation*. In making these grants, they are bound to consider not only the existing state of things, but *the probable and future wants of the public*. The increasing population of their own city and of Brooklyn, and of other parts of Long Island, are facts which they are not only bound to know, but to notice, in their legislative capacity. They act *as the agents and trustees of the public*; and *the rights, interests, and the convenience of the public are not to be surrendered or sacrificed*, either with a view to their own revenues, or to the emoluments of other individuals. As, therefore, the Corporation could not, in the opinion of your Committee, have intended violation of the high confidence reposed in them, *and as no such violation is definitely expressed in the language of the covenant, your Committee do not acquiesce in the construction of it claimed by the lessees, nor in the suggestion made by the Ferry Committee of 1825, that such was the bona fide intention of the contracting parties*. The Low Committee feel confident, that if this covenant had clearly expressed the whole township, or its southern water boundary, the lease would never have been executed. And again; it is not to be presumed that this Board were ever so unmindful of the rights of the public, and their own duty, as intentionally to permit an equivocal word to be introduced into a covenant, with a *secret understanding* between them and the other contracting party, that it should be construed in aftertimes to mean more than they were willing plainly to express at the time of executing the contract. Nor do your Committee apprehend that, at this or any future day, it will be permit-

ted, in any of our tribunals of justice, to torture that word into a signification never thought of or mentioned by either of the contracting parties, inconsistent with the duties of the Corporation, and a gross infringement upon the rights of the public.

Your Committee, therefore advise, that it would be perfectly safe, as to all legal consequences, to grant another ferry, conformable to the report and resolution offered by the Ferry Committee. If it is granted at any point on the Brooklyn side nearer to the Old Ferry than the one proposed by the Ferry Committee, it will probably become the subject of legal controversy, in which the issue may be doubtful. Whether the necessity of the case demands such a hazard on the part of the Corporation, the Board must be left to judge for themselves.

All which is respectfully submitted.

P. C. VAN WYCK,
THOS. BOLTON,
EFFINGHAM SCHIEFFELIN.

IN COMMON COUNCIL,

SEPTEMBER 10, 1827.

Resolution offered by Alderman Cebra.

Resolved, That the several reports of the Law and Ferry Committees, and the Law Committee, on the subject of the proposed establishment of a New South Ferry between Brooklyn and this city, be referred back to the said Committees, together with all the documents relating to the same, and that the said Committees report at the next meeting of this Board whether any, and if any, what compromise or arrangement can be effected by an amicable agreement between the parties interested, to the end that this Board may at the next meeting finally decide upon such arrangements as may be proposed; or, in case no amicable settlement is offered, that the subject be finally disposed of, as proposed by the former reports of the said Committees.

Adopted.

J. MORTON, Clerk.

IN COMMON COUNCIL,

OCTOBER 2, 1827.

"The Law and Ferry Committees, to whom were referred the annexed resolution, together with all the documents on the subject of the proposed establishment of a new South Ferry between Brooklyn and this city, and the reports of the Law Ferry Committee thereon :

REPORT,

That the parties interested have appeared before them, and that in the opinion of the Committee there is no reasonable prospect that any compromise or arrangement can be effected by an amicable agreement ; the Committee have, therefore, attentively examined the subject, and are of opinion that the public requires the establishment of a new South Ferry ; but, as some doubts are entertained as to the extent of the rights of the lessees of the Fulton Ferry, the Committee recommend the adoption of the annexed resolution.

JAMES LYNCH,
JOHN YATES CEBRA,
SAMUEL STEVENS,
WILLIAM W. MOTT,
THOMAS BOLTON,
E. SCHIEFFELIN.

Resolved, That it is expedient to establish a ferry, at or below Coffee-house slip, and to the landing at the foot of Jaroleman street, in the town of Brooklyn, on condition that lessees indemnify the Corporation against all damages under their covenant to lessees of the Fulton Ferry ; and, further, on condition that if a suit is commenced for a breach of said covenant, that the lessees of the new ferry will suspend the use of said ferry during the pendency of such suit, and until it shall be determined against the claim of said lessees, and with such further conditions as may be required under the direction of the Law and Ferry Committees, and that the Ferry Committee be authorized to receive proposals for the lease of such ferry accordingly."

In Common Council, Oct. 8, 1827

Negatived

J. MORTON, Clerk.

IN COMMON COUNCIL,

APRIL 20, 1829.

The Ferry Committee, on the Petitions for a new South Ferry, presented the following Report, which was laid for consideration, and directed to be printed for the use of the Members.

J. MORTON, Clerk.

The Ferry Committee, to whom was referred the Petitions on the subject of a New South Ferry to Long Island,

RESPECTFULLY REPORT,

That the parties interested in this subject, (as well as those concerned in the present Fulton Ferry Company, as the applicants for the establishment of the new ferry,) have been heard by the Committee in support of their respective claims and views, and the Committee have carefully reviewed the reports which have emanated from former Committees of this Board, by whom the important questions involved in this subject have already been fully examined.

With those Reports printed for the use of the members of the Common Council, the Committee feel it would not be in their power to throw additional light upon the points therein discussed, by going into the subject in detail, and having arrived, by the same course of reasoning, at the same conclusion with the Ferry Committee who reported in relation to this matter on 31st July, 1826, (and which Report received the sanction of the Law Committee of this Board, by their Report of the 11th September, following,) your Committee have annexed hereto a copy of the said Report of the former Ferry Committee, and beg leave to refer to the same as containing their present opinion, and as presenting the Resolution which they would now respectfully submit to the Board on this subject, viz.:

Resolved, That the Ferry Committee be authorized to receive proposals for the lease of a ferry, to be established from _____ slip to the public landing near the dwelling house of Ralph Patchin, in the town of Brooklyn, and report the same to this Board.

JOHN YATES CEBRA,
WILLIAM W. MOTT.

New York, 20th April, 1829.

BOARD OF ALDERMEN,

OCTOBER 17, 1831.

Resolution offered by Alderman CEBRA.

Whereas the intercourse between this city and the town of Brooklyn is yearly increasing, more especially on the lower or westerly side, and as the wants of our citizens require additional facilities in crossing and re-crossing the East river; therefore, *Resolved*, that it be referred to the joint Committees on Ferries and Finance, to inquire into, and at an early day to report upon the expediency of establishing a ferry, to be known and called *the South Ferry*, between this city and the Island of Nassau, to be located on Long Island at the foot of Jaroleman street, Brooklyn, or at some convenient place near to and south thereof; and to be located in this city between the battery and slip, but not easterly of Coffee-house slip.

Resolved, That the same joint committees inquire into, and report upon the expediency of allowing to the heirs, (four children.) of the late Robert Fulton, for years, such portion of the profits of the *South Ferry* as the Committees may deem proper.

Referred to the Ferry and Finance Committees.

J. MORTON, *Clerk*.

BOARD OF ALDERMEN,

JANUARY 9, 1832.

Resolution offered by the Ferry Committee.

Whereas public convenience requires that further and greater facilities and accommodations should be afforded to the public generally, in crossing and re-crossing the Brooklyn Ferry, at the foot of Fulton street, East river.

Therefore, Resolved, that it be referred to the Finance Committee and Ferry Committee, to open a negociation with the lessees of the Fulton Ferry Company, whereby an additional boat, to be devoted exclusively to the carrying of foot passengers, be placed on said ferry, and that in the mean time the Finance Committee be requested not to re-lease to the New York and Fulton Company that part of Fulton slip now under verbal lease to them.

JOHN YATES CEBRA,
THOMAS JEREMIAH,
GEORGE D. STRONG.

Referred to the Ferry and Finance Committees.

J. MORTON, *Clerk*.

BOARD OF ALDERMEN,

MARCH 4, 1833.

The Ferry Committee, to whom had been referred the petition of sundry persons for a South Ferry, presented the following report in favor of the same, which was read, laid on the table, ordered to be printed for the use of the members, and made the order of the day at the next meeting of the Board.

J. MORTON, Clerk.

The Ferry Committee, to whom was referred the petition of Gabriel Wisner, and six hundred respectable citizens of the first ward and Brooklyn, praying for a ferry south of Fulton Ferry, to Brooklyn, and also that of Charles Hoyt and his associates, for a lease for said ferry,

RESPECTFULLY REPORT,

That they have duly considered the same, and are fully satisfied, from the crowded state of the present ferry, and streets and avenues leading thereto, that the wants of the community require further ferry accommodations in that section of the city, and the expediency of granting their petition cannot be doubted: they therefore offer to the Common Council for adoption the following resolutions:—

Resolved, That it is apparent that public convenience and the wants of our citizens require additional ferry accommodation between this city and King's county;—and whereas, the lessces of Fulton Ferry are willing to release and discharge the Corporation of the city of New York from the operation of the covenant contained in the present lease, preventing the establishment of another ferry south of Fulton Ferry, between this city and Brooklyn—and are also willing to add to their present accommodations two additional steam ferry-boats, to be approved by your Ferry Committee, to be employed in carrying passengers and light freight exclusively, *upon condition* that the present lease, *without* the covenant aforesaid, be extended for the term of five years.

Therefore Resolved, That the present lease of Fulton Ferry be extended to Gertrude Cutting, the present lessee, for the term of five years: provided she release the Corporation from the covenant aforesaid, and that two additional

new and complete steam ferry-boats, for the transportation of foot passengers and light freight, be placed upon the said ferry within six months after the necessary wharves and piers for their accommodation shall be completed.

Resolved, That the wharf at the foot of Fulton street, now occupied by the Providence steam-boats, be appropriated as a slip for the accommodation of the two additional steam ferry-boats, for which said lessee shall pay, in addition to their present rent, and commencing on the first day of May next, an annual rent of one thousand five hundred dollars, and interest at the rate of seven per cent. per annum on all moneys expended by the Common Council for slips and piers necessary for the accommodation of said steam ferry-boats at Brooklyn.

Resolved, That a new South Ferry be established at and from Old slip, in the city of New York, to Patchin's dock, or at any point between that and Jaroleman street, inclusive, at Brooklyn, for the term of fourteen years, at an annual rent of two thousand five hundred dollars, for the first seven years, and five thousand dollars per annum for the next seven years ; and that the necessary bridges, floats, &c. on New York side be prepared by the Corporation, and that the said lease be granted to Charles Hoyt and his associates.

Resolved, That *Old slip* be filled up on a line with *South street*, and the Committee on Wharves and Public Lands and Places be hereby authorized and required to contract for filling up the same ; and so much of said slip as may be necessary to be appropriated for said ferry accommodation.

And the said lessees are hereby required to place on said new South Ferry, two good new and sufficient steam ferry boats, to be approved of by your Ferry Committee, immediately ; and when required so to do by the Common Council, one other new steam ferry-boat.

Resolved, That the Counsel and Attorney of the Common Council prepare the necessary plans, contracts and leases, in conformity with the foregoing resolutions, to be executed by all the parties thereto.

Respectfully submitted by

JOHN YATES CEBRA,
ERASTUS BARNES,
CHAS. HENRY HALL.

BOARD OF ASSISTANT ALDERMEN.

Report of the Ferry Committee, laid on the table, and ordered to be printed.

J. W. RICHARDSON, Clerk.

The Ferry Committee, to whom was referred the petition of Alpheus Sherman and Clarence D. Sacket, and their associates, praying for the establishment of a South Ferry to Brooklyn,

REPORT,

That they have had the subject matter referred to them under consideration, and are fully convinced, from the crowded state of the present Fulton Ferry, and the streets and avenues leading to the same, that the wants of the community require further ferry accommodations. That the inhabitants of the first ward particularly, as well as the inhabitants on the Brooklyn side of the East river, have long been subjected to great inconvenience for want of such accommodation. Your Committee also deem it proper to suggest, that by the establishment of the contemplated ferry, a more intimate union will be effected between this city and Long Island, and greatly tend to promote that spirit of harmony which will be found reciprocally gratifying and advantageous, and will moreover serve to show more fully the necessity of hereafter uniting under the same Corporation and municipal regulations.

Your Committee further report, that the petitioners and their associates have made an arrangement with the Fulton Ferry Company, and entered into a written stipulation to pay them a specified annual sum of money during the continuance of their lease ; in consideration of which, they have agreed to waive and relinquish their claims under their covenant in their lease, to prevent the establishment of the ferry now applied for ; by means whereof, all difficulties which have heretofore existed on this subject, have been removed : and that the written stipulation hereinbefore referred to, has been submitted to your Committee, the terms of which they consider unobjectionable.

The Committee therefore recommend the adoption of the following resolutions :—

Resolved, That a new South Ferry be established at and from the Old slip in the city of New York, to a point at or near Patchen's dock, at the foot of Atlantic street, in the

city of Brooklyn ; and that one-half of said Old slip, or such part thereof and of the bulkhead as may be necessary be appropriated for that purpose ; and that the necessary floats be prepared by the said lessees ; and the said ferry right leased to the petitioners for the term of fifteen years, at the annual rent of one thousand dollars a year, up to the first of May, 1839 ; after which date, for the remainder of the time said lease has to run, the Common Council shall fix the annual rent to be paid by the said lessees.

Resolved, That the Counsel of the Board prepare the necessary lease and covenants for the above purpose, requiring the lessees to place on said ferry two good, safe and sufficient steam-boats, to be approved by the Ferry Committee, on or before the first day of November next.

WM. C. WALES,
MORGAN L. SMITH.

To the Hon. the Common Council of the city of New York.

The Petition of ALPHEUS SHERMAN and CLARENCE D. SACKETT, of the city of New York, on behalf of themselves and their associates, respectfully sheweth :—

That the intercourse between the cities of New York and Brooklyn, has increased to such an extent, that the present ferry accommodations between the two places are wholly inadequate to the wants of the public : and that any addition to the number of boats at the present established ferries, would not obviate the necessity of another communication on a different section of the East river. The crowded state of the streets and avenues, on both sides, as well as the increasing shipping of the river near the present points of communication, seem also to require that a new route should be opened south of the existing landings.

Your petitioners further respectfully show, that in order to obviate the legal difficulties which have heretofore impeded the action of your honorable body, on the subject of a South Ferry, growing out of the covenants contained in the lease to Messrs. Fulton and Cutting, the terms of an arrangement have been settled with the present proprietors of the Fulton Ferry, by which their consent to the application of your petitioners has been given, and which arrangement, it is believed, will be consummated forthwith.—The nature and particulars of which will be submitted to your honorable body, as soon as the same shall be reduced to form.

Your petitioners therefore pray, that a lease my be granted to them, for the establishment of a ferry from Old slip or its vicinity, in the city of New York, to a point at or near the foot of Atlantic street, and south of the termination of Jaroleman street, in Brooklyn.

And your petitioners will ever pray.

ALPHEUS SHERMAN,
CLARENCE D. SACKETT.

New York 3d March, 1834.

BOARD OF ASSISTANT ALDERMEN,

MAY 5, 1834.

*Resolutions of Mr. Fickett, relative to the ferry between
New York and Brooklyn.*

J. W. RICHARDSON, Clerk.

Whereas, to defray the various expenses of government to which this city, as a place of great commerce, is necessarily subject, there is annually required to be raised by tax a very large sum beyond the revenues derived from the public property: And whereas, the personal property of all who permanently transact their business within this city participates in the benefits and advantages procured by such expenditures, and in common justice, therefore, should share the burden: And whereas, it has been represented to this Corporation that further facilities of communication are required for the accommodation of the residents of Brooklyn: And whereas, this Corporation does not feel disposed to exercise its rights, powers, and privileges with an illiberal spirit towards our neighbors; but, on the contrary, desirous of promoting a friendly feeling, (both individually and collectively,) between the inhabitants of the two cities, is willing to yield more than a due share of advantages to produce such result: therefore, be it

Resolved, That the Corporation of the city of New York will unite with the Corporation of the city of Brooklyn, in an application to the Legislature of this state, so to amend the law relative to the taxation of personal estate, as that the owners thereof in those two cities may be assessed and taxed at their places of business respectively.

Resolved, That when the Corporation of the city of Brooklyn shall have concurred with the foregoing resolution, and duly signified the same to this Corporation, the Corpo-

ration of New York will take immediate measures to prepare additional ferry accommodations at the Fulton street Ferry, and will lease the same to the Fulton street Ferry Company, until the expiration of their present lease, on the following terms, to wit:—For the addition on this side, one thousand dollars per annum, being the rent now received therefor; and for the addition on the other side, ten per cent per annum, on whatever sum it may be found necessary to lay out for the purpose.

Resolved, That the Corporation of New York will also establish a ferry south of Fulton street, from such places on either side as may be agreed upon, and will lease the same to such person or persons as may have procured the assent of the Fulton street Company thereto, until the expiration of the said Ferry Company's lease, on the following terms, viz:—On this side at whatever rent the premises to be occupied may at the time produce: and on the other side, ten per cent per annum on whatever sum the Corporation may expend: and in both cases, ten per cent per annum on the amount that may be expended for fixtures.

Resolved, That at the expiration of the leases aforesaid, the Corporation of New York will again lease the said ferries to such person or persons, in such manner and on such conditions in all respects, as to them shall seem most conducive to the public interest, without any claim or pretence of claim for preference, in any manner whatsoever, by the present lessees, or who may be the lessees at the time aforesaid.

Resolved, That the clerk of the Common Council furnish the Corporation of the city of Brooklyn with a copy of the foregoing preamble and resolutions; and also cause the same to be published in the newspapers employed by this Corporation.

Offered by

May 5th, 1834.

FRA'S FICKETT.

BOARD OF ASSISTANT ALDERMEN,

MAY 12, 1834.

Resolution of Mr. Allen, relative to the ferries. Adopted and ordered to be printed.

J. W. RICHARDSON, Clerk.

Resolved, That the clerk of this Board be, and he is hereby instructed, to lay before the Board of Assistants elect, as soon as may be after their organization, a copy of the

petition of Alpheus Sherman and Clarence D. Sackett, with the report of the Ferry Committee thereon; together with the remonstrance of the citizens of the first ward: and also, a copy of the preamble and resolutions proposed by Mr. Fickett, on the 5th inst., with the following resolution:

Resolved, That it is worthy the serious consideration of the Common Council, whether, in establishing any additional ferries, or on the expiration of any of the leases of any of the ferries now in operation from this city, it will not contribute to the increased accommodation of the public and the advantage of the city finances, to run the said ferries, or some of them, at the expense and for the benefit of the Corporation.

BOARD OF ASSISTANT ALDERMEN,

JULY 14, 1834.

Report of the Ferry Committee on the papers referred to them, relative to the South Ferry.

R. FISHER, Clerk.

The Ferry Committee, to whom was referred certain papers in relation to the South Ferry, consisting of a report made by the Ferry Committee of the late Board of Assistants, on the petition of Alpheus Sherman and Clarence D. Sackett, praying for the establishment of the South Ferry, and for a lease thereof; also a remonstrance from certain inhabitants of the first ward against locating the South Ferry at Old slip; also certain resolutions offered by Mr. Fickett, relative to the ferries between New York and Brooklyn; also certain resolutions offered by Mr. Allen on the same subject,

RESPECTFULLY REPORT,

That they have considered, (as the principal subject referred to them,) the expediency of establishing a South Ferry from this city to Long Island, and the fittest location for such ferry on this side. They fully agree with the report of the late Ferry Committee, that such a ferry is necessary for the convenience of the inhabitants of the lower part of this city, and those of Brooklyn, the streets leading to the present Fulton Ferry on each side of the river, being entirely too crowded for safe and expeditious passage: But they differ in opinion with the said late Com-

mittee, as to the fittest location for the ferry on this side, and as to the proper mode of leasing such ferry when established.

The report of the late Committee recommends that the new South Ferry should be established at and from the Old slip in this city, to a point at or near Patchen's dock, at the foot of Atlantic street, in Brooklyn. This Committee, having heard the representations of the owners of property in the neighborhood of the Old slip, are well satisfied that the commerce of the city would be injured by locating a ferry there, and they have concluded to recommend that Whitehall slip be fixed upon as the fittest location for such ferry in this city.

As to the manner of leasing this and other ferries, the Committee are of opinion that all ferries should be leased for short periods, not exceeding years, and that they should be given to the highest bidder, to be ascertained either by putting the lease up at auction, or by advertising for the highest offer, and they recommend that this course be pursued in regard to the proposed South Ferry.

The resolution of Mr. Allen suggests the propriety of running all ferries in this city at the expense and for the benefit of the Corporation. The Committee do not believe it would be expedient to adopt this course. The patronage of the Common Council is already, if any thing, too extensive, and your Committee are opposed to any schemes which must create new offices or employments under the Corporation.

The resolutions offered by Mr. Fickett contemplate that no further ferry facilities should be granted between this city and Brooklyn, until the Corporation of Brooklyn shall co-operate with the Common Council of this city in obtaining the passage of an act of the Legislature, so to amend the law relative to the taxation of personal estate, as that the owners thereof in the two cities, may be assessed and taxed at their places of business respectively. The Committee highly approve of this suggestion in respect to taxation, but do not think that it should delay the establishment of the South Ferry, if public convenience calls for it.— They recommend that proper measures be taken during the next session of the Legislature, to obtain the passage of such a law as will subject persons residing in Brooklyn, but having counting-houses and stores in the city of New York, to taxation here in like manner as if they were residents of this city, and if the co-operation of the authorities of Brooklyn can be obtained to procure such a law, operating equally

upon the inhabitants of both cities, it will increase the chances of its success before the Legislature. This subject will, they presume, be taken up by the Common Council in due season.

The Committee conclude by offering the following resolutions :—

Resolved, That a ferry be established from Whitehall slip to the foot of Atlantic street, in Brooklyn, to be called the South Ferry, and that such part of the said Whitehall slip and of the bulkhead fronting the same, as may be necessary for such ferry, be appropriated for that purpose, and designated by the Street Commissioner and Superintendent of Wharves.

Resolved, That the Comptroller advertise for proposals to take a lease of the said ferry, for _____ years, the lessees to furnish two good steam ferry-boats, to be approved by the Ferry Committee of the Common Council, and to provide all necessary floats and fixtures, and to be subject to such provisions and conditions as are usual in the ferry leases granted by the Corporation ; and that such lease be given to such person or persons as may offer the highest annual rent therefor, he or they giving a bond under a penalty, and with sureties to be approved by the Comptroller, conditioned to indemnify the Corporation against all claims on the part of the lessees of the Fulton Ferry Company, under their lease ; such bond to be approved, as to its form and contents, by the Council.

Resolved, That the counsel prepare such lease as may be given in pursuance of the foregoing resolution, the lessees paying the expense thereof.

ROBERT SMITH, }
J. J. BOYD, } *Committee on Ferries.*

ERRATA.

In page 3, of Statement, &c. third line from bottom, read, " a representative from one of the upper wards."

In p. 13, ninth line from bottom, read, "shove it off upon secondary grounds."







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